CHAPTER 102

WORKER’S COMPENSATION

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first employer for the employee’s services, regardless of the duration of the services.

(g) Except as provided in s. 102.555 with respect to occupational deafness, “time of injury”, “occurrence of injury”, or “date of injury” means:
1. In the case of accidental injury, the date of the accident which caused the injury.
2. In the case of disease, the date of disability or, if that date occurs after the cessation of all employment that contributed to the disability, the last day of work for the last employer whose employment caused disability.

(gm) “Wisconsin compensation rating bureau” means the bureau provided for in s. 626.06.

(h) “Uninsured employer” means an employer that is in violation of s. 102.28 (2).

(j) “Uninsured employers fund” means the fund established under s. 102.80 (1).

(k) “Workweek” means a calendar week, starting on Sunday and ending on Saturday.


In an occupational disease claim, the examiner may find the date of injury to be other than the last day of work. Royal–Gloucester Insurance Co. v. DLIRH, 82 Wis. 2d 90, 260 N.W.2d 670 (1978).

An intentionally inflicted injury, unexpected and unforeseen by the injured party, is an accident under sub. (2) (c). Jenson v. Employers Mutual Casualty Co. 161 Wis. 2d 213, 468 N.W.2d 1 (1991).

...
and the worker’s compensation insurance carrier. This section does not limit the right of an employee to bring action against any coemployee for an assault intended to cause bodily harm, or against a coemployee for negligent operation of a motor vehicle not owned or leased by the employer, or against a coemployee of the same employer to the extent that there would be liability of a governmental unit to pay judgments against employees under a collective bargaining agreement or a local ordinance.

(3) Providing or failing to provide any safety inspection or safety advisory service incident to a contract for worker’s compensation insurance or to a contract for safety inspections or safety advisory services does not by itself subject an insurer, an employer, an insurance service organization, a union, a union member or any agent or employee of the insurer, employer, insurance service organization or union to liability for damages for an injury resulting from providing or failing to provide the inspection or services.

(4) The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of law in effect as of the date of the injury except as to compensation payable to the employee’s dependents.

(b) The right to compensation and the amount of the compensation payable to the employee’s dependents shall not be affected by the provisions of the federal Uniform Longshore and Harbor Workers’ Compensation Act, 44 U.S.C. 1341 et seq., or by the provisions of any other federal law.

(c) Disability, or benefits for a disability, resulting from an injury shall, for purposes of determining the amount of compensation payable under this chapter, be deemed to be received when fully paid or when a settlement or compromise in writing is effectuated, whichever occurs first. Members of a partnership are employers of the employees of the partnership. The right to compensation and the amount of the compensation payable under this chapter may be recovered, either by the injured employee, or by the injured employee’s personal representative, or by his or her dependents, in any court of competent jurisdiction, in any manner appropriate to the relief to which the party is entitled.

Section 102.43 (5) (c) of the statutes, as amended, provides that the right of an employee to bring action against any coemployee for an assault intended to cause bodily harm, or against an employer for the negligent operation of a motor vehicle not owned or leased by the employer, or against a coemployee of the same employer to the extent that there would be liability of a governmental unit to pay judgments against employees under a collective bargaining agreement or a local ordinance.

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Worker’s compensation provides the exclusive remedy for injuries sustained as the result of a company doctor’s negligence. Franke v. Durkee, 141 Wis. 2d 172, 413 N.W.2d 667 (1987).

The rule is adopted, replacing the “dual capacity” doctrine. A 3rd-party may recover from an employer only when the employer has operated in a distinct persona as to the employee. Henning v. General Motors Assembly, 143 Wis. 2d 144, 422 N.W.2d 551 (1988).

The legal distinction between a corporation/employer and a partnership/landlord that leased the factory to the corporation, although both entities were composed of the same individuals, eliminated the partners’ immunity as individuals under the exclusivity doctrine for negligence in maintaining the leased premises. Couillard v. Van Ess, 152 Wis. 2d 62, 447 N.W.2d 391 (1989).

The injured employee, and not an incurring coemployee, must have been acting within the scope of employment at the time of injury. Jenson v. Mutual Casualty Co. 161 Wis. 2d 253, 468 N.W.2d 1 (1991).

An assault under sub. (2) must be more than verbal; it must be physical. Jenson v. Mutual Casualty Co. 161 Wis. 2d 253, 468 N.W.2d 136 (1991).

A parent corporation can be liable as a 3rd-party tortfeasor to an employee of a subsidiary when the parent negligently undertakes to render services to the subsidiary that the parent should have recognized were necessary for the protection of the subsidiary’s employees. Miller v. Bristol-Myers, 186 Wis. 2d 863, 485 N.W.2d 31 (1992).

A compromise of a worker’s compensation claim based on an allegation that an injury was job related precluded the claimant from pursuing a discrimination claim against the same employer on the theory that the injury was not job related. Larson v. LIRC, 178 Wis. 2d 118, 503 N.W.2d 582 (Cl. 1993).

An employee who closed the door on the plaintiff’s hand was engaged in “the operation of a motor vehicle” under sub. (2). Hake v. Zimmerman, 178 Wis. 2d 417, 504 N.W.2d 411 (Cl. 1993).

A resident who purchased and leased a machine to the corporation as an individual held a dual persona and was subject to tort liability. Rauch v. Officine Curioni, S.P.A. 179 Wis. 2d 539, 508 N.W.2d 12 (Cl. 1993).

This section does not bar an employee from seeking arbitration under a collective bargaining agreement to determine whether termination following an injury was part of the agreement. This section only excludes tort actions for injuries covered by the act. County of Lacrosse v. WERC, 182 Wis. 2d 15, 513 N.W.2d 708 (1994).

A claim for tortious interference with contract is not an action for injuries covered by the act. Newhall v. Lake Wobegon, 165 Wis. 2d 598, 480 N.W.2d 204 (1992).

An employee’s claim for defamation by an employer is preempted by this section. Claims for tortious interference with contract are not for injuries covered by the work-related injuries compensation act. Legal and Equity Co. v. Detroit Edison Co., 187 Wis. 2d 18, 523 N.W.2d 815 (1994).

A waiver of employer immunity from suit under this section may be made by an express agreement of indemnification. Schaub v. West Bend Mutual, 224 Wis. 2d 430, 589 N.W.2d 211 (1999).

A worker’s compensation claim for a work-related injury precluded the assertion of the employee’s claim that she was entitled to leave for the injury under the Family Medical Leave Act, s. 103.10. Finell v. DILHR, 186 Wis. 2d 340, 523 N.W.2d 731 (Cl. 1994).

Employer payment of travel expenses does not alone render commuting as part of employment subject to coverage. When travel is a substantial part of employment and the employer provides a vehicle under its control and pays costs, coverage may be triggered. Doering v. LIRC, 187 Wis. 2d 471, 523 N.W.2d 142 (Cl. 1994).

Whether physical contact of a sexual nature was an assault by a coemployee not subject to the exclusive remedy provision of sub. (2) is a question of fact. A reasonable juror could conclude that sexual conduct could be so offensive that a reasonable person would have understood that physical injury such as loss of sleep, weight loss, or ulcers was substantially certain to follow. West Bend Mutual Insurance Co. v. Simon, 210 Wis. 2d 623, 561 N.W.2d 678 (1997).

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Nothing in this chapter precludes an employer from agreeing with employees to compensate injured workers in excess of their workers’ compensation benefits. Excess payments are not worker’s compensation and may be conditioned on the participation of an employer. Lentz v. Young, 204 Wis. 2d 137, 556 N.W.2d 856 (Cl. 1997), 97-0865.

An employee terminated for misrepresenting his or her medical condition while receiving workers’ compensation benefits for a conceded work-related injury continues to be entitled to benefits. B rakebush Brothers, Inc. v. LIRC, 210 Wis. 2d 623, 563 N.W.2d 512 (1997), 95-2586.
the latter’s temporary help agency under a theory of respondent superior. War v. QPS Companies, 2007 WI App 14, 298 Wis. 2d 440, 728 N.W.2d 39, 06–0208.

The exception to coemployee immunity due to negligent operation of a vehicle in sub. (1) (a) 3, is interpreted to be that the negligence results from the left turn by an employee who was driving the vehicle, not from any attempt by the employer to render services to a customer and the making of the journey was not for the purpose of rendering such services. Faraday–Sultze v. Aurora Medical Center of Wisconsin, 2010 WI App 130, 371 Wis. 2d 756, 798 N.W.2d 216, 09–2594.

The negligent operation of a motor vehicle exception to the exclusive remedy provision in sub. (2) did not apply to the incorrect placement of a vehicle on a host for repairs. The alleged negligence here was the way the vehicle was positioned on the hosts. Whether the vehicle was correctly positioned is not dependent on how the vehicle was operated. Under any definition of operation, the defendant’s manipulation of or control over the vehicle, its movement, or its instruments was not negligent in and of itself. Kuehn v. Sentry Select Insurance Companies, 2009 WI App 38, 518 Wis. 2d 506, 765 N.W.2d 860, 09–0757.

When an employee was required to report to a job site not owned or controlled by the employer to render services to a customer and the making of the journey was not for the purpose of rendering such services, there was nothing done by the employer’s agents to stop the employee’s regular commute to work from that of any employees who leave their home to travel to their place of employment where the workday begins. The employee was not employees under sub. (1) (f). The travel commutes described by sub. (1) (f) must be something more and something different than a daily commute to or from an establishment job site. McKee v. Porta Painting, Inc., 2009 WI App 89, 303 Wis. 2d 771, 779 N.W.2d 30, 08–0729.

Under Jensen, 161 Wis. 2d 253, the tort of intentional infliction of mental distress is barred by the exclusivity provision of the Worker’s Compensation Act. The Jensen court did not make any reference to the distinction between acts that occurred during employment and after termination. Farady–Sultze v. Aurora Medical Center of Oshkosh, 2010 WI App 99, 327 Wis. 2d 110, 787 N.W.2d 433, 09–0329.

Sustained (d) prevent fraud in the system, i.e., a deliberately inflicted injury for the purpose of recovering worker’s compensation benefits. It did not apply when the claimant suffered injuries while performing cake decorating when the claimant was not working on her superiors, despite the fact that the employer was not aware of the medical restrictions prohibiting that activity. Pick ‘n Save Roundy’s v. LIRC, 2010 WI App 110, 327 Wis. 2d 223, 779 N.W.2d 175, 08–0435.

The key to the application of the “well-being activity” exclusion under sub. (1) (c) 3, is whether the employee was being compensated for engaging in his or her employer’s business at the time of the injury. If the employer was compensating the employee when the injury occurred, it was the employer’s acknowledgement that the employee was engaged in the employer’s business and the exception does not apply. City of Kenosha v. LIRC, 2011 WI App 51, 352 Wis. 2d 448, 797 N.W.2d 855, 10–0986.

Post-termination defamation by an employer is not covered by this chapter and is not subject to the exclusive remedy provision. Anderson v. Hebert, 2011 WI App 56, 332 Wis. 2d 451, 809 N.W.2d 74, 08–0880.

Because an injured employee entered into a compromise agreement with his employer, the exclusive remedy provision under sub. (2) precludes the injured employee from bringing a subsequent negligence action against a fellow employee for the injuries that were the subject of the worker’s compensation claim. Martine v. Williams, 2011 WI App 68, 335 Wis. 2d 203, 799 N.W.2d 449, 10–1426.

The logical corollary to sub. (1) (c) 3, is that an employee is performing services growing out of and incidental to employment if the employee’s injury occurs while participating in a well–being program, event, or activity that is not voluntary or for which the employee is receiving compensation. An employee who was performing push–ups as his residence in preparation for a mandatory fitness test, for which extra payments could be awarded for excellence and discipline imposed for failure, was reasonably for the purpose of these official duties, the statute is not encompassed within the language of sub. (2). The coemp- employee under this chapter or tort or agency law. Johnson v. Hondo, Inc. 125 F.3d 401 (1997).

Sexual harassment was an accident under sub. (1) (e) and subject to the exclusivity provision of sub. (2). Lentz, 195 Wis. 2d 457, is distinguished. Hubben v. Nardone, 137 F.3d 480 (1998).

A 3rd–party was required to pay 95 percent of the damages even though only 25 percent negligent because an employer was shielded by sub. (2). Schuldies v. Service Machine Co. 448 F. Supp. 1196 (1977). Since a plaintiff was a special employee of a 3rd–party defendant and a 3rd–party action was barred by the exclusivity provisions of this section. Simmons v. Atlas Mach. Co. 493 F. Supp. 1082 (1980).

Although the employer of an injured employee was found to be at fault, a manufacturer who was also found to be at fault was not entitled to contribution from the employer. Ludewig v. Ermanno, Inc. 504 F. Supp. 1229 (1981).


The exclusivity provision of the worker’s compensation act does not bar a claim for invasion of privacy under s. 895.50. Marino v. Arandell Corp. 1 F. Supp. 2d 947 (1999).


102.04 Definition of employer. (1) The following shall constitute employers subject to the provisions of this chapter, within the meaning of s. 102.03:

(a) The state and each local governmental unit in this state.
(b) 1. Every person who usually employs 3 or more employees for services performed in this state, whether in one or more trades, businesses, professions, or occupations, and whether in one or more locations.

2. Every person who usually employs less than 3 employees, provided the person has paid wages of $500 or more in any calendar quarter for services performed in this state. Such employer shall become subject on the 10th day of the month next succeeding such quarter.

3. This paragraph shall not apply to farmers or farm labor.

(c) Every person engaged in farming who on any 20 consecutive or nonconsecutive days during a calendar year employs 6 or more employees, whether in one or more locations. The provisions of this chapter shall apply to such employer 10 days after the twentieth such day.

(d) Every joint venture electing under s. 102.28 (2) (a) to be an employer.

(e) Every person to whom paras. (a) to (d) are not applicable, who has an employee in any contract of hire is subject to the exclusive remedy provision even though that contract of hire is written, oral, or implied, or oral, and written, and who, at or prior to the time of the injury to the employee for which compensation may be claimed, shall, as provided in s. 102.05, have elected to become subject to the provisions of this chapter, and who shall, prior to such accident, have effectuated a withdrawal of such election.

(2) Except with respect to a partner or member electing under s. 102.075, members of partnerships or limited liability companies shall not be counted as employees. Except as provided in s. 102.07 (5) (a), a person under contract of hire for the performance of any service for any employer subject to this section is not the employer of any other person with respect to that service, and that other person shall, with respect to that service, be an employee of the employer for whom the services are being rendered.

(2m) A temporary help agency is the employer of an employee whom the temporary help agency has placed with or leased to another employer that compensates the temporary help agency for the employee’s services. A temporary help agency is liable under s. 102.03 for all compensation and other payments payable under this chapter to or with respect to that employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3 or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, a temporary help agency may not seek or receive reimbursement from another employer for any payments made as a result of that liability.

(2r) For purposes of this chapter, a franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee,
as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless any of the following applies:

(a) The franchisor has agreed in writing to assume that role.

(b) The franchisor has been found by the department or the division to have exercised a type or degree of control over the franchisee or the franchisee’s employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor’s trademarks and brand.

(3) As used in this chapter “farming” means the operation of farm premises owned or rented by the operator. “Farm premises” means areas used for operations herein set forth, but does not include other areas, greenhouses or other similar structures unless used principally for the production of food and farm plants. “Farmer” means any person engaged in farming as defined. Operation of farm premises shall be deemed to be the planting and cultivating of the soil thereof; the raising and harvesting of agricultural, horticultural or arboricultural crops thereon; the raising, breeding, tending, training and management of livestock, bees, poultry, fur-bearing animals, wildlife or aquatic life, or their products, thereon; the processing, drying, packing, packaging, freezing, grading, storing, delivering to storage, to market or to a carrier for transportation to market, distributing directly to consumers or marketing any of the above-named commodities, substantially all of which have been planted or produced thereon; the clearing of such premises and the salvaging of timber and management and use of wood lots thereon, but not including logging, lumbering or wood cutting operations unless conducted as an accessory to other farming operations; the managing, conserving, improving and maintaining of such premises or the tools, equipment and improvements thereon and the exchange of labor, services or the exchange of equipment for other farmers in pursuing such activities. The operation for not to exceed 30 days during any calendar year, by any person deriving the person’s principal income from farming, of farm machinery in performing farming services for other farmers for a consideration other than exchange of labor shall be deemed farming. Operation of such premises shall be deemed to include also any other activities commonly considered to be farming whether conducted on or off such premises by the farm operator.


When an employee simultaneously performs service for 2 employers under their joint control and the service for each is the same or closely related, both employers are liable for worker’s compensation. Insurance Co. of North America v. DILHR 45 Wis. 2d 361, 173 N.W.2d 192 (1970).

Wisconsin’s compensation jurisprudence clearly recognizes that an in−state injury in the course of employment will give rise to coverage under the act. When an out−of−state employer sends an out−of−state employee to Wisconsin and the employee is injured or killed in Wisconsin in the course of employment, Wisconsin’s statute is applicable. Therefore, a coemployer has no liability for the employee’s death or the coemployer’s insurers were properly dismissed from the case. State of Wisconsin v. Mercantile Insurance Company, 2003 WI App 113, 217 Wis. 2d 371, 756 N.W.2d 662, 07−1519.

The county was found to be the employer, for worker’s compensation purposes, of a care giver for a service recipient under the long−term support community options waiver program under s. 46.27 (11). County of Barron v. Labor and Industry Review Commission, 2010 WI App 149, 330 Wis. 2d 203, 792 N.W.2d 584, 09−1845.

Using dictionary definitions of “usually” in sub. (1) (b), “an” employer is a person who ordinarily, customarily, or habitually employs 3 or more employees or who more often than not employs 3 or more employees. Noyce v. Aggressive Metals, Inc., 2016 WI App 58, 371 Wis. 2d 548, 885 N.W.2d 150, 14−2143.

Under sub. (2m), the employee’s “employer” was the temporary help agency that elected or under any appointment or contract of hire, express or implied, whether a resident of the state or employed or injured within or without the state. The state and any local governmental unit may require a bond from a contractor to protect the state or local governmental unit against compensation to employees of the contractor or to employees of a subcontractor under the contractor. A “contractor” under a franchisor within the meaning of this section. Maryland Casualty Co. v. DILHR, 77 Wis. 2d 472, 253 N.W.2d 228 (1977).

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Under sub. (2m), the employee’s “employer” was the temporary help agency that elected or under any appointment or contract of hire, express or implied, whether a resident of the state or employed or injured within or without the state. The state and any local governmental unit may require a bond from a contractor to protect the state or local governmental unit against compensation to employees of the contractor or to employees of a subcontractor under the contractor. A “contractor” under a franchisor within the meaning of this section. Maryland Casualty Co. v. DILHR, 77 Wis. 2d 472, 253 N.W.2d 228 (1977).

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certificate under s. 102.80 (3) (ag) this paragraph does apply to
claims for compensation filed on or after the date specified in that
certificate.

(b) Every person, including all officials, in the service of the
state, or of any local governmental unit in this state, whether
elected or under any appointment or contract of hire, express or
implied, and whether a resident of the state or employed or injured
within or without the state. This paragraph first applies on the first
day of the first July beginning after the day that the secretary files
the certificate under s. 102.80 (3) (a), except that if the secretary files
the certificate under s. 102.80 (3) (ag) this paragraph does apply to
claims for compensation filed on or after the date specified
in that certificate.

(2) Any peace officer shall be considered an employee while
engaged in the enforcement of peace or in the pursuit and capture
of those charged with crime.

(3) Nothing in this chapter prevents a local governmental unit
from paying a teacher, police officer, fire fighter, or any other
employee his or her full salary during a period of disability, nor
interferes with any pension fund, nor prevents payment to a
teacher, police officer, fire fighter, or any other employee from a
pension fund.

(4) (a) Every person in the service of another under any con-
tract of hire, express or implied, all helpers and assistants of
employees, whether paid by the employer or employee, if
employed with the knowledge, actual or constructive, of the
employer, including minors, who shall have the same power of
contracting as adult employees, but not including the following:
1. Domestic servants.
2. Any person whose employment is not in the course of a
trade, business, profession or occupation of the employer, unless
as to any of said classes, the employer has elected to include them.
(b) Par. (a) 2. shall not operate to exclude an employee whose
employment is in the course of any trade, business, profession or
occupation of the employer, however casual, unusual, desultory
or isolated the employer’s trade, business, profession or occupation
may be.

(4m) For the purpose of determining the number of employ-
ees to be counted under s. 102.04 (1) (b), but for no other purpose,
a member of a religious sect is not considered to be an employee,
if the conditions specified in s. 102.28 (3) (b) have been satisfied
with respect to that member.

(5) For the purpose of determining the number of employees
to be counted under s. 102.04 (1) (c), but for no other purpose, the
following definitions shall apply:
(a) Farmers or their employees working on an exchange basis
shall not be deemed employees of a farmer to whom their labor is
furnished in exchange.
(b) The parents, spouse, child, brother, sister, son— in—law,
daughter— in— law, father— in— law, mother— in— law, brother— in— law,
or sister— in— law of a farmer shall not be deemed the farmer’s
employees.
(c) A shareholder— employee of a family farm corporation shall
be deemed a “farmer” for purposes of this chapter and shall not be
reckoned as an employee of a farmer. A “family farm corporation
means a corporation engaged in farming all of whose shareholders
are related as lineal ancestors or lineal descendents, whether
by blood or by adoption, or as spouses, brothers, sisters, uncles,
aunts, cousins, sons— in— law, daughters— in— law, fathers— in— law,
mothers— in— law, brothers— in— law or sisters— in— law of such lineal
ancestors or lineal descendents.
(d) A member of a religious sect is not considered to be an
employee of a farmer if the conditions specified in s. 102.28 (3)
(b) have been satisfied with respect to that member.

(7) (a) Every member of a volunteer fire company or fire
department organized under ch. 213, a legally organized rescue
squad, or a legally organized diving team is considered to be an
employee of that company, department, squad, or team. Every
member of a company, department, squad, or team described in
this paragraph, while serving as an auxiliary police officer at an
emergency, is also considered to be an employee of that company,
department, squad, or team. If a company, department, squad, or
team described in this paragraph has not insured its liability for
compensation to its employees, the political subdivision within
which that company, department, squad, or team was organized
shall be liable for that compensation.

(b) The department may issue an order under s. 102.31 (1) (b)
permitting the county within which a volunteer fire company or
fire department organized under ch. 213, a legally organized rescue
squad, an ambulance service provider, as defined in s. 256.01
(3), or a legally organized diving team is organized to assume full
liability for the compensation provided under this chapter of all
volunteer members of that company, department, squad, or
team.

Cross-reference: See also s. DWD 80.30, Wis. adm. code.

(7m) An employee, volunteer, or member of an emergency
management program is considered an employee for purposes of
this chapter as provided in s. 323.40, a member of a regional emerg-
ency response team who is acting under a contract under s. 323.70 (2)
is considered an employee of the state for purposes of this chapter
as provided in s. 323.70 (5), and a practitioner is consid-
ered an employee of the state for purposes of this chapter as
provided in s. 257.03.

(8) (a) Except as provided in pars. (b) and (bm), every inde-
pendent contractor is, for the purpose of this chapter, an employee
of any employer under this chapter for whom he or she is perform-
ing service in the course of the trade, business, profession or occu-
pation of such employer at the time of the injury.
(b) An independent contractor is not an employee of an
employer for whom the independent contractor performs work or
services if the independent contractor meets all of the following
conditions:
1. Maintains a separate business with his or her own office,
equipment, materials and other facilities.
2. Holds or has applied for a federal employer identification
number with the federal internal revenue service or has filed busi-
ness or self— employment income tax returns with the federal inter-
nal revenue service based on that work or service in the previous
year.
3. Operates under contracts to perform specific services or
work for specific amounts of money and under which the indepen-
dent contractor controls the means of performing the services or
work.
4. Incurs the main expenses related to the service or work that
he or she performs under contract.
5. Is responsible for the satisfactory completion of work or
services that he or she contracts to perform and is liable for a fail-
ure to complete the work or service.
6. Receives compensation for work or service performed
under a contract on a commission or per job or competitive bid
basis and not on any other basis.
7. May realize a profit or suffer a loss under contracts to per-
form work or service.
8. Has continuing or recurring business liabilities or obliga-
tions.
9. The success or failure of the independent contractor’s busi-
ness depends on the relationship of business receipts to expendi-
tures.

(bm) A real estate broker or salesperson who is excluded under
s. 452.38 is not an employee of a firm, as defined in s. 452.01 (4w),
for whom the real estate broker or salesperson performs services
unless the firm elects under s. 102.078 to name the real estate bro-
er or salesperson as its employee.

(c) The division may not admit in evidence any state or federal
law, regulation, or document granting operating authority, or
license when determining whether an independent contractor meets the conditions specified in par. (b) 1. or 3.

(8m) An employer who is subject to this chapter is not an employee of another employer for whom the first employer performs work or service in the course of the other employer’s trade, business, profession or occupation.

(9) Members of the national guard and state defense force, when on state active duty under direction of appropriate authority, but only in case federal laws, rules or regulations provide no benefits substantially equivalent to those provided in this chapter.

(10) Further to effectuate the policy of the state that the benefits of this chapter shall extend and be granted to employees in the service of the state, or of any local governmental unit in this state, on the same basis, in the same manner, under the same conditions, and with like right of recovery as in the case of employees of persons, firms, or private corporations, any question whether any person is an employee under this chapter shall be governed by and determined under the same standards, considerations, and rules of decision in all cases under subs. (1) to (9). Any statute, ordinance, or rule that may be otherwise applicable to the classes of employees enumerated in sub. (1) shall not be controlling in deciding whether any person is an employee for the purposes of this chapter.

(11) The department may by rule prescribe classes of volunteer workers who may, at the election of the person for whom the service is being performed, be deemed to be employees for the purposes of this chapter. Election shall be by endorsement upon the worker’s compensation insurance policy with written notice to the department. In the case of an employer exempt from insuring liability, election shall be by written notice to the department. The department shall by rule prescribe the means and manner in which notice of election by the employer is to be provided to the volunteer workers.

(11m) Subject to sub. (11), a volunteer for a nonprofit organization described in section 501 (c) of the internal revenue code, as defined in s. 71.01 (6), that is exempt or eligible for exemption from federal income taxation under section 501 (a) of the internal revenue code who receives from that nonprofit organization nominal payments of money or other things of value totaling not more than $10 per week is not considered to be an employee of that nonprofit organization for purposes of this chapter.

(12) A student in a technical college district while, as a part of a training program, he or she is engaged in performing services for which a school organized under ch. 38 collects a fee or is engaged in producing a product sold by such a school is an employee of that school.

(12m) (a) In this subsection:

1. “Institution of higher education” means an institution within the University of Wisconsin System, a technical college, a tribal college, an institution of higher education located in this state.
2. “Private school” means a private school while in the process of repairing his truck was properly found under sub. (8) to be an employee of a school district, a private school, or institution of higher education under s. 938.34 is an employee of the county in which the court ordering the community service work is located. No compensation may be paid to that employee for temporary disability during the healing period.

(14) An adult performing uncompensated community service work under s. 304.062, 943.017 (3), 971.38, 973.03 (3), 973.05 (3), 973.09 or 973.10 (1m) is an employee of the county in which the district attorney requiring or the court ordering the community service work is located or in which the place of assignment under s. 304.062 or 973.10 (1m) is located. No compensation may be paid to that employee for temporary disability during the healing period.

(15) A sole proprietor or partner or member electing under s. 102.075 is an employee.

(16) An inmate participating in a work release program under s. 303.065 (2) or in the transitional employment program is an employee of any employer under this chapter for whom he or she is performing service at the time of the injury.

(17) A prisoner of a county jail who is assigned to a work camp under s. 303.10 is not an employee of the county or counties providing the work camp while the prisoner is working under s. 303.10 (3).

(17g) A state employee who is on a leave of absence granted under s. 230.35 (3) (e) to provide services to the American Red Cross in a particular disaster is not an employee of the state for the purposes of this chapter during the period in which he or she is on the leave of absence, unless one of the following occurs:

(a) The American Red Cross specifies in its written request under s. 230.35 (3) (e) 2. c. that a unit of government in this state is requesting the assistance of the American Red Cross in the particular disaster and the state employee during the leave of absence provides services related to assisting the unit of government.

(b) The American Red Cross specifies in its written request under s. 230.35 (3) (e) 2. c. that it has been requested to provide assistance outside of this state in a particular disaster and there exists between the state of Wisconsin and the state in which the services are to be provided a mutual aid agreement, entered into by the governor, which specifies that the state of Wisconsin and the other state may assist each other in the event of a disaster and which contains provisions addressing worker’s compensation coverage for the employees of the other state who provide services in Wisconsin.

(17m) A participant in a trial employment match program job under s. 49.147 (3) is an employee of any employer under this chapter for whom the participant is performing service at the time of the injury.

(18) A participant in a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) is an employee of the Wisconsin works agency, as defined under s. 49.001 (9), for the purposes of this chapter, except to the extent that the person for whom the participant is performing work provides worker’s compensation coverage.

(20) An individual who is performing services for a person participating in the self-directed services option, as defined in s. 25.35 (14m) (1), for a person receiving long-term care benefits under s. 46.275 or 46.277 or under any children’s long-term support waiver program on a self-directed basis, or for a person receiving the Family Care benefit, as defined in s. 46.2805 (4), or benefits under the Family Care Partnership program, as described in s. 49.496 (1) (bk) 3., on a self-directed basis and who does not otherwise have worker’s compensation coverage for those services is considered to be an employee of the entity that is providing financial management services for that person.

A truck owner who fell and sustained injuries in a company’s truck parking area while in the process of repairing his truck was properly found under sub. (8) to be a...
statutory employee of the company at the time of his injury although he was an inde-
pendent contractor who worked exclusively for the trucking company under a lease
agreement. Employers Mutual Liability Insurance Co. v. DILHR, 52 Wis. 2d 515, 1971
N.W.2d 907 (1971).

There was no employment when a member of an organization borrowed a refriger-
ated truck from a packing company for use at a picnic and was injured when returning

Nothing in this chapter precludes an employer from agreeing with employees to
continue salaries for injured workers in excess of worker’s compensation benefits.
Excess payments are not worker’s compensation and may be conditioned on the par-
ties’ agreement. City of Milwaukee v. DILHR, 193 Wis. 2d 626, 534 N.W.2d 903 (CL
App. 1995).

Sub. (8) (b) supplants the common law and provides the sole test for determining
whether a worker is an independent contractor for purposes of ch. 102. Jarrett v.

A person injured upon the premises of a temporary help agency prior to receiv-
ing worker’s compensation for a work assignment was an employee under this section when the agency operated
essentially as a hiring hall contracting with persons seeking work assignments and
requiring that the persons seeking work physically present themselves each day at the
hall and remain there until they have work assignment. Labor Ready, Inc. v. LIRC,

The primary test for determining an employer–employee relationship is whether
the alleged employer has a right to control the details of the work. In assessing the
right to control, 4 secondary factors are considered: 1) direct evidence of the exercise of the
right of control; 2) the method of payment of compensation; 3) the furnishing
of equipment or tools for the performance of the work; and 4) the right to terminate
the employment relationship. Acuity Mutual Insurance Company v. Olivas, 2007 WI
101, 298 Wis. 2d 640, 726 N.W.2d 258, 05–0685.

Sub. (8m) allows for a distinction between a person as an employee and as the pro-
prietor of a side business that the employee runs separately. Acuity Insurance Com-
pany v. Whittingham, 2007 WI App 210, 303 Wis. 2d 613, 740 N.W.2d 154, 09–2379.

A firm, as defined in s. 452.01 (4w), as a sole proprietor, partner or member
of a limited liability company engaged in a vocation, profession or business on
a substantially full-time basis may elect to be an employee under this chapter by
procuring insurance against injury sustained in the pursuit of that vocation, profession or business. This coverage
may be obtained by endorsement on an existing policy of worker’s compensation insurance or by issuance of a separate policy to the sole proprietor, partner or member on the same basis as any other policy of worker’s compensation insurance.

(2) For the purpose of any insurance policy other than a worker’s compensation insurance policy, no sole proprietor, partner or member may be considered eligible for worker’s compensation benefits unless he or she elected to be an employee under this section.

(3) Any sole proprietor, partner or member who elected to be an employee under this section may withdraw that election upon 30 days’ prior written notice to the insurance carrier and the Wisconsin
compensation rating bureau.


102.076 Election by corporate officer. (1) Not more than 2 officers of a corporation having more than 10 stockholders may elect not to be subject to this chapter. If the corporation has been issued a policy of worker’s compensation insurance, an officer of the corporation may elect not to be subject to this chapter and not to be covered under the policy at any time during the period of the policy. Except as provided in sub. (2), the election shall be made by an endorsement on the policy of worker’s compensation insurance issued to that corporation, naming each officer who has so elected. The election is effective for the period of the policy and may not be reversed during the period of the policy. An officer who so elects is an employee for the purpose of determining whether the corporation is an employer under s. 102.04 (1) (b).

(2) If a corporation has not more than 10 stockholders, not more than 2 officers and no other employees and is not otherwise required under this chapter to have a policy of worker’s compensation insurance, an officer of that corporation who elects not to be subject to this chapter shall file a notice of that election with

the department on a form approved by the department. The election is effective until the officer rescinds it by notifying the department in writing.


102.077 Election by school district or private school. (1) A school district, private school, or institution of higher education may elect to name as its employee for purposes of this chapter a student described in s. 102.07 (12m) (b) by an endorsement on policy of worker’s compensation insurance, if, if the school district, private school, or institution of higher education is exempt from the duty to insure under s. 102.28 (2) (a), by filing a declaration with the department in the manner provided in s. 102.31 (2) (a) naming the student as an employee of the school dis-

trict, private school, or institution of higher education for purposes of this chapter. A declaration under this subsection shall list the name of the student to be covered under this chapter, the name and address of the employer that is providing the work training or work experience for that student, and the title, if any, of the work training, work experience, or work study program in which the student is participating.

(2) A school district, private school, or institution of higher education may revoke a declaration under sub. (1) by providing written notice to the department in the manner provided in s. 102.31 (2) (a), the student, and the employer who is providing the work training or work experience for that student. A revocation under this subsection is effective 30 days after the department receives notice of that revocation.


102.078 Election by real estate firm. (1) A firm, as defined in s. 452.01 (4w), may elect to name as its employee for purposes of this chapter a real estate broker or salesperson who is excluded under s. 452.38 by an endorsement on its policy of worker’s compensation insurance or, if the firm is self–insured under s. 102.28 (2) (b), by filing a declaration with the department in the manner provided in s. 102.31 (2) (a) naming the real estate broker or salesperson as an employee of the firm for purposes of this chapter. A declaration under this subsection shall state all of the following:

(a) The name of the real estate broker or salesperson to be covered under this chapter.

(b) That a written agreement has been entered into that provides that the real estate broker or salesperson shall not be treated as an employee for federal and state tax purposes.

(c) That 75 percent or more of the compensation related to sales or other output, as measured on a calendar year basis, paid to the real estate broker or salesperson under the written agreement specified in par. (b) is directly related to the brokerage ser-

vices performed by the real estate broker or salesperson on behalf of the firm.

(2) A firm, as defined in s. 452.01 (4w), may revoke a declara-

tion under sub. (1) by providing written notice to the department in the manner provided in s. 102.31 (2) (a) and to the real estate broker or salesperson named in the declaration. A revocation under this subsection is effective 30 days after the department receives notice of that revocation.

History: 2015 a. 258.

102.08 Administration for state employees. The department of administration has responsibility for the timely delivery of benefits payable under this chapter to employees of the state and their dependents and other functions of the state as an employer under this chapter. The department of administration may delegate this authority to employing departments and agen-
cies and require such reports as it deems necessary to accomplish this purpose. The department of administration or its delegated authorities shall file with the department of workforce development the reports that are required of all employers. The depart-
ment of workforce development shall monitor the delivery of

2017–18 Wisconsin Statutes updated through 2019 Wis. Act 20 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on November 7, 2019. Published and certified under s. 35.18. Changes effective after November 7, 2019, are designated by NOTES. (Published 11–7–19)
effits to state employees and their dependents and shall consult with and advise the department of administration in the manner and at the times necessary to ensure prompt and proper delivery.

History: 1981 c. 20; 1995 a. 27 s. 9130 (4); 1997 a. 3.

102.11 Earnings, method of computation. (1) The average weekly earnings for temporary disability, permanent total disability, or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than $30 nor more than the wage rate that results in a maximum compensation rate of 110 percent of the state’s average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than $30 and, for permanent partial disability for injuries occurring on or after March 2, 2016, and before January 1, 2017, not more than $513, resulting in a maximum compensation rate of $342, and, for permanent partial disability for injuries occurring on or after January 1, 2017, not more than $543, resulting in a maximum compensation rate of $362. Between such limits the average weekly earnings shall be determined as follows:

(a) 1. Daily earnings shall mean the daily earnings of the employee at the time of the injury in the employment in which the employee was then engaged. In determining daily earnings under this subdivision, any hours worked beyond the normal full–time working day as established by the employer, whether compensated at the employee’s regular rate of pay or at an increased rate of pay, shall not be considered.

2. a. In this subdivision, “part time for the day” means Saturday half days and any other day during which an employee works less than the normal full–time working hours established by the employer.

b. If at the time of the injury the employee is working part time for the day, the employee’s daily earnings shall be arrived at by dividing the amount received, or to be received by the employee for such part–time service for the day, by the number of hours and fractional hours of the part–time service, and multiplying the result by the number of hours of the normal full–time working day established by the employer for the employment involved.

3. The average weekly earnings shall be arrived at by multiplying the employee’s hourly earnings by the hours in the normal full–time workweek as established by the employer, or by multiplying the employee’s daily earnings by the number of days and fractional days in the normal full–time workweek as established by the employer, at the time of the injury in the business operation of the employer for the particular employment in which the employee was engaged at the time of the employee’s injury, whichever is greater.

4. It is presumed, unless rebutted by reasonably clear and complete documentation, that the normal full–time workweek established by the employer is 24 hours for a flight attendant, 56 hours for a firefighter, and not less than 40 hours for any other employee. If the employer has established a multi–week schedule with regular hours alternating between weeks, the normal full–time workweek is the average number of hours worked per week under the multi–week schedule.

(1am) In the case of an employee who is a member of a regularly–scheduled class of part–time employees, average weekly earnings shall be arrived at by the method prescribed in par. (a), except that the number of hours of the normal working day and the number of hours and days of the normal workweek shall be the hours and days established by the employer for that class. An employee is a member of a regularly–scheduled class of part–time employees if all of the following conditions are met:

1. The employee is a member of a class of employees that does the same type of work at the same location and, in the case of an employee in the service of the state, is employed in the same office, department, independent agency, authority, institution, association, society, or other body in state government or, if the department or the division determines appropriate, in the same subunit of an office, department, independent agency, authority, institution, association, society, or other body in state government.

2. The minimum and maximum weekly hours regularly scheduled by the employer for the members of the class during the 13 weeks immediately preceding the date of the injury vary by no more than 5 hours. Subject to this requirement, the members of the class do not need to work the same days or the same shift to be considered members of a regularly–scheduled class of part–time employees.

3. At least 10 percent of the employer’s workforce doing the same type of work are members of the class.

4. The class consists of more than one employee.

(b) In case of seasonal employment, average weekly earnings shall be arrived at by the method prescribed in par. (a), except that the number of hours of the normal full–time working day and the number of days of the normal full–time workweek shall be the hours and the days in similar service in the same or similar nonseasonal employment. Seasonal employment shall mean employment that can be conducted only during certain times of the year, and in no event shall employment be considered seasonal if it extends during a period of more than fourteen weeks within a calendar year.

(c) In the case of a person performing service without fixed earnings, or when normal full–time days or weeks are not maintained by the employer in the employment in which the employee worked when injured, or when, for other reason, earnings cannot be determined under the methods prescribed by par. (a) or (b), the earnings of the injured person shall, for the purpose of calculating compensation payable under this chapter, be taken to be the usual going earnings paid for similar services on a normal full–time basis in the same or similar employment in which earnings can be determined under the methods set out in par. (a) or (b).

(d) Except in situations where par. (b) applies, average weekly earnings shall in no case be less than actual average weekly earnings of the employee for the 52 calendar weeks before his or her injury within which the employee has been employed in the business, in the kind of employment and for the employer for whom the employee worked when injured. Calendar weeks within which no work was performed shall not be considered under this paragraph. This paragraph applies only if the employee has worked within a total of at least 6 calendar weeks during the 52 calendar weeks before his or her injury in the business, in the kind of employment and for the employer for whom the employee worked when injured. For purposes of this section, earnings for part–time services performed for a labor organization pursuant to a collective bargaining agreement between the employer and that labor organization shall be considered a part of the total earnings in the preceding 52 calendar weeks, whether payment is made by the labor organization or the employer.

(e) Where any things of value are received in addition to monetary earnings as a part of the wage contract, they shall be deemed a part of earnings and computed at the value thereof to the employee.

(f) 1. Except as provided in subd. 2., average weekly earnings may not be less than 24 times the normal hourly earnings at the time of injury.

2. The weekly temporary disability benefits for a part–time employee who restricts his or her availability in the labor market to part–time work and is not employed elsewhere may not exceed the average weekly wages of the part–time employment.

(g) If an employee is under 27 years of age, the employee’s average weekly earnings on which to compute the benefits accruing for permanent disability or death shall be determined on the basis of the earnings that the employee, if not disabled, probably would earn after attaining the age of 27 years. Unless otherwise established, the projected earnings determined under this paragraph shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable.
(2) The average annual earnings when referred to in this chapter shall consist of 50 times the employee’s average weekly earnings. Subject to the maximum limitation, average annual earnings shall in no case be taken at less than the actual earnings of the employee in the year immediately preceding the employee's injury in the kind of employment in which the employee worked at the time of injury.

(3) The weekly wage loss referred to in this chapter shall be the percentage of the average weekly earnings of the injured employee computed under this section that fairly represents the proportionate extent of the impairment of the employee’s earning capacity in the employment in which the employee was working at the time of the injury and other suitable employments. Weekly wage loss shall be fixed as of the time of the injury, but shall be determined in view of the nature and extent of the injury.


Cross-reference: See also s. DWD 80.51, Wis. adm. code.

It was reasonable for the commission to determine that health insurance premiums were not “things of value (that) are received in addition to monetary earnings” under sub. (1) (c). Theurer v. LIRC, 2001 WI 26, 242 Wis. 2d 29, 624 N.W.2d 110, 100–1085.

102.12 Notice of injury, exception, laches. No claim for compensation may be maintained unless, within 30 days after the occurrence of the injury or within 30 days after the employee knew or ought to have known the nature of his or her disability and its relation to the employment, actual notice was received by the employer or by an officer, manager or designated representative of an employer. If no representative has been designated by poster placed in one or more conspicuous places where notices to employees are customarily posted, then notice received by any superior is sufficient. Absence of notice does not bar recovery if it is found that the employer was not misled by that absence. Regardless of whether notice was received, if, no payment of compensation, other than medical treatment or burial expense, is made, and if no application is filed with the department within 2 years after the date of the injury or death or the date the employee or his or her dependent knew or ought to have known the nature of the disability and its relation to the employment, the right to compensation for the injury or death is barred, except that the right to compensation is not barred if the employer knew or should have known, within the 2-year period, that the employee had sustained the injury on which the claim is based. Issuance of notice of a hearing on the motion of the department or the division has the same effect for the purposes of this section as the filing of an application. This section does not affect any claim barred under s. 102.17 (4).

History: 1983 a. 98; 2015 a. 55.

102.123 Statement of employee. If an employee provides to the employer or the employer’s insurer a signed statement relating to a claim for compensation by the employee, the employer or insurer shall provide a copy of the statement to the employee within a reasonable time after the statement is made. If an employer or insurer uses a recording device to take a statement from an employee relating to a claim for compensation by the employee, the employer or insurer, on the request of the employee or the employee’s attorney or other authorized agent, shall reduce the statement to writing and provide a written copy of the entire statement to the employee, attorney, or agent within a reasonable time after the statement is taken. The employer or insurer shall also provide a true recording of the statement available as an exhibit if a hearing on the claim is held. An employer or insurer that fails to provide an employee with a copy of the employee’s statement as required by this section or that fails to make available as an exhibit the actual recording of a statement recorded by a recording device as required by this section may not use that statement in any manner in connection with the employee’s claim for compensation.

History: 2001 a. 37.

102.125 Fraud reporting, investigation, and prosecution. (1) FRAUDULENT CLAIMS REPORTING AND INVESTIGATION. If an insurer or self−insured employer has evidence that a claim is false or fraudulent in violation of s. 943.395 and if the insurer or self−insured employer is satisfied that reporting the claim to the department will not impede its ability to defend the claim, the insurer or self−insured employer shall report the claim to the department. The department may require an insurer or self−insured employer to investigate an allegedly false or fraudulent claim and may provide the insurer or self−insured employer with any records of the department relating to that claim. An insurer or self−insured employer that investigates a claim under this subsection shall report on the results of that investigation to the department.

(2) ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce development may request the department of justice to assist the department of workforce development in an investigation under sub. (1) or in the investigation of any other suspected fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to worker’s compensation.

(3) PROSECUTION. If based on an investigation under sub. (1) or (2) the department has a reasonable basis to believe that a violation of s. 943.20, 943.38, 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the department shall refer the results of the investigation to the department of justice or to the district attorney of the county in which the alleged violation occurred for prosecution.


102.13 Examination; competent witnesses; exclusion of evidence; autopsy. (1) (a) Except as provided in sub. (4), whenever compensation is claimed by an employee, the employee shall, upon the written request of the employee’s employer or worker’s compensation insurer, submit to reasonable examinations by physicians, chiropractors, psychologists, dentists, physician assistants, advanced practice nurse prescribers, or podiatrists provided and paid for by the employer or insurer. No employee who submits to an examination under this paragraph is a patient of the examining physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist for any purpose other than for the purpose of bringing an action under ch. 655, unless the employee specifically requests treatment from that physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist.

(b) An employer or insurer who requests that an employee submit to reasonable examination under par. (a) or (am) shall tender to the employee, before the examination, all necessary expenses including transportation expenses. The employee is entitled to have a physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist provided by himself or herself present at the examination and to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, podiatrist, dentist, physician assistant, advanced practice nurse prescriber, or vocational expert immediately upon receipt of those reports by the employer or worker’s compensation insurer. The employee is also entitled to have a translator provided by himself or herself present at the examination if the employee has difficulty speaking or understanding the English language. The employer’s or insurer’s written request for examination shall notify the employee of all of the following:
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1. The proposed date, time, and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, or vocational expert.

2. The procedure for changing the proposed date, time and place of the examination.

3. The employee’s right to have his or her physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist present at the examination.

4. The employee’s right to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, or vocational expert immediately upon receipt of these reports by the employer or worker’s compensation insurer.

5. The employee’s right to have a translator provided by himself or herself present at the examination if the employee has difficulty speaking or understanding the English language.

(c) So long as the employee, after a written request of the employer or insurer that complies with par. (b), refuses to submit to or in any way obstructs the examination, the employee’s right to begin or maintain any proceeding for the collection of compensation is suspended, except as provided in sub. (4). If the employee refuses to submit to the examination after direction by the department, the division, or an examiner, or in any way obstructs the examination, the employee’s right to the weekly indemnity that accrues and becomes payable during the period of that refusal or obstruction, is barred, except as provided in sub. (4).

(d) Subject to par. (c):

1. Any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, or vocational expert who is present at any examination under par. (a) or (am) may be required to testify as to the results of the examination.

2. Any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist who attended a worker’s compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the division when the division so directs.

3. Notwithstanding any statutory provisions except par. (c), any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist attending a worker’s compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the division when the division so directs.

4. The testimony of any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

(e) No person may testify on the issue of the reasonableness of the fees of a licensed health care professional unless the person is licensed to practice the same health care profession as the professional whose fees are the subject of the testimony. This paragraph does not apply to the fee dispute resolution process under s. 102.16 (2).

(f) If an employee claims compensation under s. 102.81 (1), the department or the division may require the employee to submit to physical or vocational examinations under this subsection.

(2) (a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician—patient, psychologist—patient, or chiropractor—patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, worker’s compensation insurer, department, or division, or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation.

(b) A physician, chiropractor, podiatrist, psychologist, dentist, physician assistant, advanced practice nurse prescriber, hospital, or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) in paper form for the actual costs of preparation of the certified duplicate, not to exceed the greater of 45 cents per page or $7.50 per request, plus the actual costs of postage, or shall furnish a legible, certified duplicate of that material in electronic format upon payment of $26 per request. Any person who refuses to provide certified duplicates of written material in the person’s custody that is requested under par. (a) shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester’s right to the duplicates under par. (a).

(3) Except as provided in this paragraph, if an injured employee has a period of temporary disability that exceeds 3 weeks or a permanent disability, if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hermia, or if the injured employee sustained an eye injury requiring medical treatment on 3 or more occasions off the employer’s premises, the department may by rule require the insurer or self-insured employer to submit to the department a final report of the employee’s treating practitioner. The department may not require an insurer or self-insured employer to submit to the department a final report of an employee’s treating practitioner when the insurer or self-insured employer denies the employee’s claim for compensation in its entirety and the employee does not contest that denial. A treating practitioner shall complete a final report on a timely basis and may charge a reasonable fee for the completion of the final report, not to exceed $100, but may not require prepayment of that fee. An insurer or self-insured employer that disputes the reasonableness of a fee charged for the completion of a treatment practitioner’s final report may submit that dispute to the department for resolution under s. 102.16 (2).

(3) If 2 or more physicians, chiropractors, psychologists, dentists, or podiatrists disagree as to the extent of an injured employee’s temporary disability, the end of an employee’s healing period, an employee’s ability to return to work at suitable available employment or the necessity for further treatment or for a particular type of treatment, the department or the division may appoint another physician, chiropractor, psychologist, dentist, or podiatrist to examine the employee and render an opinion as soon as possible. The department or the division shall promptly notify the parties of this appointment. If the employee has not returned to work, payment for temporary disability shall continue until the department or the division receives the opinion. The employer or its insurance carrier, or both, shall pay for the examination and opinion. The employer or insurance carrier, or both, shall receive appropriate credit for any overpayment to the employee determined by the department or the division after receipt of the opinion.

(4) The right of an employee to begin or maintain proceedings for the collection of compensation and to receive weekly indemnities that accrue and become payable shall not be suspended or barred under sub. (1) when an employee refuses to submit to a physical examination, upon the request of the employer or worker’s compensation insurer or at the direction of the department, the division, or an examiner, that would require the employee to travel a distance of 100 miles or more from his or her place of residence, unless the employee has claimed compensation for treatment from a practitioner whose office is located 100 miles or more from the employee’s place of residence or the department, division, or...
examiner determines that any other circumstances warrant the examination. If the employee has claimed compensation for treatment from a practitioner whose office is located 100 miles or more from the employee’s place of residence, the employer or insurer may request, or the department, the division, or an examiner may direct, the employee to submit to a physical examination in the area where the employee’s treatment practitioner is located.

(5) The department or the division may refuse to receive testimony as to conditions determined from an autopsy if it appears that the party offering the testimony had procured the autopsy and had failed to make reasonable effort to notify at least one party in interest or the department or the division at least 12 hours before the autopsy of the time and place at which the autopsy would be performed, or that the autopsy was performed by or at the direction of the coroner or medical examiner or at the direction of the district attorney for purposes not authorized under ch. 979.

The department or the division may withhold findings until an autopsy is held in accordance with its directions.


102.14 Jurisdiction of department and division; advisory committee. (1) Except as otherwise provided, this chapter shall be administered by the department and the division.

(2) The council on worker’s compensation shall advise the department and the division in carrying out the purposes of this chapter, shall submit its recommendations with respect to amendments to this chapter to each regular session of the legislature, and shall report its views upon any pending bill relating to this chapter to the proper legislative committee. At the request of the chairpersons of the senate and assembly committees on labor, the department shall schedule a meeting of the council with the members of the senate and assembly committees on labor to review and discuss matters of legislative concern arising under this chapter.

History: 1975 c. 147 s. 54; 1979 c. 278; 2015 a. 55.

102.15 Rules of procedure; transcripts. (1) Subject to this chapter, the division may adopt its own rules of procedure and may change the same from time to time.

(2) The division may provide by rule the conditions under which transcripts of testimony and proceedings shall be furnished.

(3) All testimony at any hearing held under this chapter shall be taken down by a stenographic reporter, except that in case of an emergency, as determined by the examiner conducting the hearing, testimony may be recorded by a recording machine.

History: 1977 c. 418; 1989 a. 64; 2015 a. 55.

Cross-reference: See also ch. DWD 80, Wis. adm. code.

102.16 Submission of disputes, contributions by employees. (1) (a) Any controversy concerning compensation or a violation of sub. (3), including a controversy in which the state may be a party, shall be submitted to the department in the manner and with the effect provided in this chapter.

(b) In the case of a claim for compensation with respect to which no application has been filed under s. 102.17 (1) (a) 1. or with respect to which an application has been filed, but the application is not ready to be scheduled for a hearing, the department may review and set aside, modify, or confirm a compromise of the claim within one year after the date on which the compromise is filed with the department, the date on which an award has been entered based on the compromise, or the date on which an application for the department to take any of those actions is filed with the department.

(c) In the case of a claim for compensation with respect to which an application has been filed under s. 102.17 (1) (a) 1., if the application is ready to be scheduled for a hearing, the division may review and set aside, modify, or confirm a compromise of the claim within one year after the date on which the compromise is filed with the division, the date on which an award has been entered based on the compromise, or the date on which an application for the division to take any of those actions is filed with the division.

(d) Unless the word “compromise” appears in a stipulation of settlement, the settlement shall not be considered a compromise, and further claim is not barred except as provided in s. 102.17 (4) regardless of whether an award is made. The employer, insurer, or dependent under s. 102.51 (5) shall have equal rights with the employee to have a compromise or any other stipulation of settlement reviewed under this subsection. Upon petition filed with the department or the division under this subsection, the department or the division may set aside the award or otherwise determine the rights of the parties.

Cross-reference: See also s. DWD 80.03, Wis. adm. code.

(1m) (a) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but disputes the reasonableableness of the fee charged by the health service provider, the department or the division may include in its order confirming the compromise or stipulation a determination made by the department as to the reasonableableness of the fee or, if such a determination has not yet been made, the department or the division may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2) (b) that the reasonableableness of the fee is in dispute. The department or the division shall deny payment of a health service fee that the department determines under sub. (2) to be unreasonable. A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this paragraph are bound by the department’s determination under sub. (2m) as to the reasonableableness of the disputed fee, unless that determination is set aside, reversed, or modified by the department under sub. (2) (f) or is set aside on judicial review as provided in sub. (2) (f).

(b) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any treatment provided to an injured employee by a health service provider, but disputes the necessity of the treatment, the department or the division may include in its order confirming the compromise or stipulation a determination made by the department under sub. (2m) as to the necessity of the treatment or, if such a determination has not yet been made, the department or the division may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2m) (b) that the necessity of the treatment is in dispute. Before determining under sub. (2m) the necessity of treatment provided to an injured employee, the department may, but is not required to, obtain the opinion of an expert selected by the department who is qualified as provided in sub. (2m) (c). The standards promulgated under sub. (2m) (g) shall be applied by an expert and by the department in rendering an opinion as to, and in determining, necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department or the division shall deny payment for any treatment that the department determines under sub. (2m) to be unnecessary. A health service provider and an insurer or self-insured employer that are parties to a dispute under this paragraph over the necessity of treatment are bound by the department’s determination under sub. (2m) on the necessity of the disputed treatment, unless that determination is set aside, reversed, or modified by the department under sub. (2m) (e) or is set aside on judicial review as provided in sub. (2m) (e).

(c) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but disputes the reasonableness of the amount charged for the prescription drug, the
that a health service fee is being disputed, a insurer or self−insured employer that is a party to the dispute shall
information on comparable fees from a database that is certified by the department under s. 102.425 (4m) (e). (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, the department and the division have jurisdiction under sub. (1m) (a), and the division has jurisdiction under s. 102.17 to resolve a dispute between a health service provider and an insurer or self−insured employer over the
reasonable amount in controversy, whether based on a single charge or a combination of charges for one or more days of service, is less than $25. After all treatment by a health service pro-
vider of an employee’s injury has ended, the health service prov-
der may submit any fee dispute to the department, regardless of the
amount in controversy. The department shall deny payment of a health service fee that the department determines under this
subsection to be unreasonable.

(b) An insurer or self−insured employer that disputes the reasonableness of a fee charged by a health service provider or the
department or the division under sub. (1m) (a) or s. 102.18 (1) (bg) 1. shall provide reasonable written notice to the health service pro-
vider that the fee is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (a) or s. 102.18 (1) (bg) 1. that a health service fee is being disputed, a health service provider may not collect the disputed fee from, or bring an action for collection of the disputed fee against, the employee who received the services for which the fee was charged.

(c) After a fee dispute is submitted to the department, the insurer or self−insured employer that is a party to the dispute shall
provide to the department information on that fee and information on fees charged by other health service providers for comparable services. The insurer or self−insured employer shall obtain the information on comparable fees from a database that is certified by the department under par. (b). Except as provided in par. (c) 1., or self−insured employer does not provide the
information required under this paragraph, the department shall determine that the disputed fee is reasonable and order that it be paid. If the insurer or self−insured employer provides the information required under this paragraph, the department shall use that information to determine the reasonableness of the disputed fee.

(d) The department shall analyze the information provided to the department under par. (c) according to the criteria provided in
this paragraph to determine the reasonableness of the disputed fee. Except as provided in 2011 Wisconsin Act 183, section 30 (2) (b), the department shall determine that a disputed fee is reasonable and order that the disputed fee be paid if that fee is at or below the
mean fee for the health service procedure for which the disputed fee was charged, plus 1.2 standard deviations from that mean, as shown by data from a database that is certified by the department under par. (h). Except as provided in 2011 Wisconsin Act 183, section 30 (2) (b), the department shall determine that a disputed fee is unreasonable and order that a reasonable fee be paid if the disputed fee is above the mean fee for the health service procedure for which the disputed fee was charged, plus 1.2 standard deviations from that mean, as shown by data from a database that is certified by the department under par. (h), unless the health service provider proves to the satisfaction of the department that a higher fee is justified because the service provided in the disputed case was more difficult or more complicated to provide than in the usual case.

(e) 1. Subject to subd. 2., if an insurer or self−insured employer that disputes the reasonableness of a fee charged by a health ser-
vice provider cannot provide information on fees charged by other health service providers for comparable services because the data-
base to which the insurer or self−insured employer subscribes is not able to provide accurate information for the health service pro-
cedure at issue, the department may use any other information that the department considers to be reliable and relevant to the dis-
puted fee to determine the reasonableness of the disputed fee.

2. Notwithstanding subd. 1., the department may use only a hospital radiology database that has been certified by the depart-
ment under par. (h) to determine the reasonableness of a hospital fee for radiology services.

(f) Within 30 days after a determination under this subsection, the department may set aside, reverse, or modify the determina-
tion for any reason that the department considers sufficient. Within 60 days after a determination under this subsection, the
department may set aside, reverse, or modify the determination on grounds of mistake. A health service provider, insurer, or self−
insured employer that is aggrieved by a determination of the department under this subsection may seek judicial review of that
determination in the same manner that compensation claims are reviewed under s. 102.23.

(g) Section 102.13 (1) (e) does not apply to the fee dispute resolu-
tion process under this subsection.

(h) The department shall promulgate rules establishing proce-
dures and requirements for the fee dispute resolution process described in this subsection, including rules specifying that health service fee databases must meet for certification under this paragraph. Using those standards, the department shall cer-
fy databases of the health service fees that various health service providers charge. In certifying databases under this paragraph, the department shall certify at least one database of hospital fees for radiology services, including diagnostic and interventional radiology, diagnostic ultrasound and nuclear medicine.

(2m) (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, the department and the divi-
sion have jurisdiction under sub. (1m) (b), and the division has jurisdiction under s. 102.17 to resolve a dispute between a health
service provider and an insurer or self−insured employer over the
necessity of treatment provided for an injured employee who
claims benefits under this chapter. A health service provider may not submit a dispute over necessity of treatment to the department, regardless of the amount in controversy. The department shall deny payment of a health service fee that the department determines under this subsection to be unnecessary.
(am) A health service provider and an insurer or self−insured employer that are parties to a dispute under this subsection over the necessity of treatment are bound by the department’s determination under this subsection on the necessity of the disputed treatment, unless that determination is set aside on judicial review as provided in par. (e).

(b) An insurer or self−insured employer that disputes the necessity of treatment provided by a health service provider or the department or the division under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable written notice to the health service provider that the necessity of that treatment is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of that treatment is being disputed, a health service provider may not collect a fee for that disputed treatment from, or bring an action for collection of the fee for that disputed treatment against, the employee who received the treatment.

(c) Before determining under this subsection the necessity of treatment provided for an injured employee who claims benefits under this chapter for the full cost of obtaining the written opinion of the expert as the department’s determination on the issues covered in the written opinion, unless the health service provider or the insurer or self−insured employer present clear and convincing written evidence that the expert’s opinion is in error.

(d) The department may charge a party to a dispute over the necessity of treatment provided for an injured employee who claims benefits under this chapter for the full cost of obtaining the written opinion of the expert as the department’s determination on the issues covered in the written opinion, unless the department determines that the individual health service provider’s position in the dispute is frivolous or based on fraudulent representations. In a subsequent dispute involving the same individual health service provider, the department shall charge the losing party to the dispute for the full cost of obtaining the written opinion of the expert.

(e) Within 30 days after a determination under this subsection, the department may set aside, reverse, or modify the determination for any reason that the department considers sufficient. Within 60 days after a determination under this subsection, the department may set aside, reverse, or modify the determination on grounds of mistake. A health service provider, insurer, or self−insured employer that is aggrieved by a determination of the department shall obtain a written opinion of the expert for the first dispute that is limited to resolving disputes regarding the reasonableness or necessity of treatment provided to an injured employee, which permits the department to evaluate the treatment, unless that determination is set aside on judicial review as provided in par. (f).

(f) The department may contract with an impartial health care services review organization to provide the expert opinions required under par. (c), or establish a panel of experts to provide those opinions, or both. If the department establishes a panel of experts to provide the expert opinions required under par. (c), the department may pay the members of that panel a reasonable fee, plus actual and necessary expenses, for their services.

(g) The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f) and rules establishing standards for determining the necessity of treatment provided to an injured employee.

Before the department may amend the rules establishing those standards, the department shall establish an advisory committee under s. 227.13 composed of health care providers providing treatment under s. 102.42 to advise the department and the council on the necessity of treatment to be furnished by that employer.

(cross-reference) See also s. DWD 80.73 and ch. DWD 81, Wis. adm. code.

(3) No employer subject to this chapter may solicit, receive, or collect any money from an employee or any other person or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under this chapter or recovering premiums paid on a contract described under s. 102.31 (1) (a) or a policy described under s. 102.315 (3), (4), or (5) (a); nor may any employer subject to this chapter sell to an employee or other person, or solicit or require the employee or other person to purchase, medical, chiropractic, podiatric, psychological, dental, or hospital tickets or contracts for medical, surgical, hospital, or other health care treatment that is required to be furnished by that employer.

(4) The department and the division have jurisdiction to pass on any question arising out of sub. (3) and to order the employer to reimburse an employee or other person for any sum deducted from wages or paid by him or her in violation of that subsection.

In addition to the penalty provided in s. 102.85 (1), any employer violating sub. (3) shall be liable to an injured employee for the reasonable value of the necessary services rendered to that employee in any arrangement made in violation of s. 102.85 (1) without regard to that employee’s actual disbursements for those services.

(5) Except as provided in s. 102.28 (3), no agreement by an employee to waive the right to compensation is valid.

2017−18 Wisconsin Statutes, updated through 2019 Wis. Act 20 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on November 7, 2019. Published and certified under s. 35.18. Changes effective after November 7, 2019, are designated by NOTES. (Published 11−7−19)
or (bp), that party shall provide written notice stating with reasonable specificity the basis for the claim to the employer, the insurer, the department, and the division before the division schedules a hearing on the claim of malice or bad faith.

4. The hearing may be adjourned in the discretion of the division, and hearings may be held at such places as the division designates, within or without the state. The division may also arrange to have hearings held by the commission, officer, or tribunal having authority to hear cases arising under the worker’s compensation law of any other state, of the District of Columbia, or of any territory of the United States, with the testimony and proceedings at such hearing to be reported to the division and to be made part of the record in the case. Any evidence so taken shall be subject to rebuttal upon final hearing before the division.

(b) In any dispute or controversy pending before the division, the division may direct the parties to appear before an examiner for a conference to consider the clarification of issues, the joining of additional parties, the necessity or desirability of amendments to the pleadings, the obtaining of admissions of fact or of documents, records, reports, and bills that may avoid unnecessary proof, and such other matters as may aid in disposition of the dispute or controversy. After that conference the division may issue an order requiring disclosure or exchange of any information or written material that the division considers material to the timely and orderly disposition of the dispute or controversy. If a party fails to disclose or exchange that information within the time stated in the order, the division may issue an order dismissing the claim without prejudice or excluding evidence or testimony relating to the information or written material. The division shall provide each party with a copy of any order issued under this paragraph.

(c) 1. Any party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as may be pertinent to the controversy before the division. No person, firm, or corporation, other than an attorney at law who is licensed to practice law in the state, may appear on behalf of any party in interest before the division or any member or employee of the division assigned to conduct any hearing, investigation, or inquiry relative to a claim for compensation or benefits under this chapter, unless the person is 18 years of age or older, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, is otherwise qualified, and has obtained from the department a license with authorization to appear in matters or proceedings before the division. Except as provided under pars. (cm), (cr), and (ct), the license shall be issued by the department under rules promulgated by the department. The department shall maintain in its office a current list of persons to whom licenses have been issued.

2. Any license issued under subd. 1. may be suspended or revoked by the department for fraud or serious misconduct on the part of an agent, may be denied, suspended, or renewed, or otherwise withheld by the department for failure to pay court-ordered payments as provided in par. (cm) on the part of an agent, and may be denied or revoked if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes or if the department determines under par. (ct) that the applicant or licensee is liable for delinquent unemployment insurance contributions. Before suspending or revoking the license of the agent on the grounds of fraud or misconduct, the department shall give notice in writing to the agent of the charges of fraud or misconduct and shall give the agent full opportunity to be heard in relation to those charges. In denying, suspending, restricting, refusing to renew, or otherwise withholding a license for failure to pay court-ordered payments as provided in par. (cm), the department shall follow the procedure provided in a memorandum of understanding entered into under s. 49.857.

3. Unless otherwise suspended or revoked, a license issued under subd. 1. shall be in force from the date of issuance until the June 30 following the date of issuance and may be renewed by the department from time to time, but each renewed license shall expire on the June 30 following the issuance of the renewed license.

(cg) 1. Except as provided in subd. 2m., the department shall require each applicant for a license under par. (c) who is an individual to provide the department with the applicant’s social security number, and shall require each applicant for a license under par. (c) who is not an individual to provide the department with the applicant’s federal employer identification number, when initially applying for or applying to renew the license.

2. If an applicant who is an individual fails to provide the applicant’s social security number to the department or if an applicant who is not an individual fails to provide the applicant’s federal employer identification number to the department, the department may not issue or renew a license under par. (c) or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under subd. 2m.

2m. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

3. The department of workforce development may not disclose any information received under subd. 1. to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or the department of children and families for purposes of administering s. 49.22.

(cm) The department of workforce development shall deny, suspend, restrict, refuse to renew, or otherwise withhold a license under par. (c) for failure of the applicant or agent to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse or for failure of the applicant or agent to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding par. (c), an action taken under this paragraph is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in ch. 227.

(cr) The department shall deny an application for the issuance or renewal of a license under par. (c), or revoke such a license already issued, if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. Notwithstanding par. (c), an action taken under this paragraph is subject to review only as provided under s. 73.0301 and not as provided in ch. 227.

(ct) 1. The department may deny an application for the issuance or renewal of a license under par. (c), or revoke such a license already issued, if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. Notwithstanding par. (c), an action taken under this paragraph is subject to review only as provided under s. 73.0301 and not as provided in ch. 227.

2. If the department denies an application or revokes a license under subd. 1., the department shall mail a notice of denial or revocation to the applicant or license holder. The notice shall include a statement of the facts that warrant the denial or revocation and a statement that the applicant or license holder may, within 30 days after the date on which the notice of denial or revocation is mailed, file a written request with the department to have the determination that the applicant or license holder is liable for delinquent contributions reviewed at a hearing under s. 108.227 (5) (a).
3. If, after a hearing under s. 108.227 (5) (a), the department affirms a determination under subd. 1. that an applicant or license holder is liable for delinquent contributions, the department shall affirm its denial or revocation. An applicant or license holder may seek judicial review under s. 108.227 (6) of an affirmation by the department of a denial or revocation under this subdivision.

4. If, after a hearing under s. 108.227 (5) (a), the department determines that a person whose license is revoked or whose application is denied under subd. 1. is not liable for delinquent contributions, as defined in s. 108.227 (1) (d), the department shall reinstate the license or approve the application, unless there are other grounds for revocation or denial. The department may not charge a fee for reinstatement of a license under this subdivision.

(d) 1. The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice nurse prescribers, and chiropractors licensed in and practicing in this state, and of certified reports by experts concerning loss of earning capacity under s. 102.23 (6) (a) (2m), presented by a party for compensation constitute prima facie evidence as to the matter contained in those reports, subject to any rules and limitations the division prescribes. Certified reports of physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice nurse prescribers, and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to being subjected to cross-examination, also constitute prima facie evidence as to the matter contained in those reports. Certified reports of physicians, podiatrists, surgeons, psychologists, and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment, and cause and extent of the disability. Certified reports by doctors of dentistry, physician assistants, and advanced practice nurse prescribers are admissible as evidence of the diagnosis and necessity of treatment but not of the cause and extent of disability. Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor, physician assistant, advanced practice nurse prescriber, or expert who knowingly makes a false statement of fact or opinion in a certified report may be fined or imprisoned, or both, under s. 943.395.

2. The record of a hospital or sanatorium in this state that is satisfactory to the division, established by certificate, affidavit, or testimony of the supervising officer of the hospital or sanatorium, any other person having charge of the record, or a physician, podiatrist, surgeon, dentist, psychologist, physician assistant, advanced practice nurse prescriber, or chiropractor to be the record of the patient in question, and made in the regular course of examination or treatment of the patient, constitutes prima facie evidence as to the matter contained in the record, to the extent that the record is otherwise competent and relevant.

3. The division may, by rule, establish the qualifications of and the form used for certified reports submitted by experts who provide information concerning loss of earning capacity under s. 102.44 (2) and (3). The division may not admit into evidence a certified report of a practitioner or other expert or a record of a hospital or sanatorium that was not filed with the division and all parties in interest at least 15 days before the date of the hearing, unless the division is satisfied that there is good cause for the failure to file the report.

4. A report or record described in subd. 1., 2., or 3. that is admitted or received into evidence by the division constitutes substantial evidence under s. 102.23 (6) as to the matter contained in the report or record.

(e) The division may, with or without notice to any party, cause testimony to be taken, an inspection of the premises where the injury occurred to be made, or the time books and payroll records of the employer to be examined by any examiner, and may direct any employee claiming compensation to be examined by a physician, chiropractor, psychologist, dentist, or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the division for its consideration upon final hearing. All ex parte testimony taken by the division shall be reduced to writing, and any party shall have opportunity to rebut that testimony on final hearing.

(f) Sections 804.05 and 804.07 shall not apply to proceedings under this chapter, except as to a witness who is any of the following:

1. Beyond reach of the subpoena of the division.

2. About to go out of the state, not intending to return in time for the hearing.

3. So sick, infirm, or aged as to make it probable that the witness will not be able to attend the hearing.

4. A member of the legislature, if any committee of the legislature or of the house of which the witness is a member is in session and the witness waives his or her privilege.

(g) Whenever the testimony presented at any hearing indicates a dispute or creates a doubt as to the extent or cause of disability or death, the division may direct that the injured employee be examined, that an autopsy be performed, or that an opinion be obtained without examination or autopsy, by or from an impartial, competent physician, chiropractor, dentist, psychologist or podiatrist designated by the division who is not under contract or regularly employed by a compensation insurance carrier or self-insured employer. The expense of the examination, autopsy, or opinion shall be paid by the employer or, if the employee claims compensation under s. 102.81, from the uninsured employers fund. The report of the examination, autopsy, or opinion shall be transmitted in writing to the division and a copy of the report shall be furnished by the division to each party, who shall have an opportunity to rebut the report on further hearing.

(h) The contents of certified reports of investigation made by industrial safety specialists who are employed, contracted, or otherwise secured by the department or the division and who are available for cross-examination, if served upon the parties 15 days prior to hearing, shall constitute prima facie evidence as to matter contained in those reports. A report described in this paragraph that is admitted or received into evidence by the division constitutes substantial evidence under s. 102.23 (6) as to the matter contained in the report.

2. If the division has reason to believe that the payment of compensation has not been made, the division may on its own motion give notice to the parties, in the manner provided for the service of an application, of a time and place when a hearing will be held for the purpose of determining the facts. The notice shall contain a statement of the matter to be considered. All provisions of this chapter governing proceedings on an application shall apply, insofar as applicable, to a proceeding under this subsection. When the division schedules a hearing on its own motion, the division does not become a party in interest and is not required to appear at the hearing.

2m) The division or any party, including the department, may require any person to produce books, papers, and records at the hearing by personal service of a subpoena upon the person along with a tender of witness fees as provided in ss. 814.67 and 885.06. Except as provided in sub. (2s), the subpoena shall be on a person having charge of the record or record of a hospital or sanatorium that was not filed with the division and all parties in interest at least 15 days before the date of the hearing, unless the division is satisfied that there is good cause for the failure to file the report.

2s) A party’s attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the hearing examiner or other representative of the division responsible for conducting the proceeding.

3) Any person who shall willfully and unlawfully fail or neglect to appear or to testify or to produce books, papers and records as required, shall be fined not less than $25 nor more than $100, or imprisoned in the county jail not longer than 30 days. Each day such person shall so refuse or neglect shall constitute a separate offense.
(4) Except as provided in this subsection and s. 102.555 (12), (b), in the case of occupational disease, the right of an employee, the employee's legal representative, or a dependent to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest, and in the case of traumatic injury, that right shall not extend beyond 6 years after that date. In the case of occupational disease or a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand, or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury; or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement, there shall be no statute of limitations, except that benefits or treatment expense for an occupational disease becoming due 12 years after the date of injury or death or last payment of compensation, other than for treatment or burial expenses, shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming due 6 years after that date shall be paid from that fund and in that manner if the date of injury or death or last payment of compensation, other than for treatment or burial expenses, is before April 1, 2006. Payment of wages by the employer during disability or absence from work to obtain treatment shall be considered payment of compensation for the purpose of this section if the employee knew of the employee's condition and its alleged relation to the employment.

(5) This section does not limit the time within which the state may bring an action to recover the amounts specified in ss. 102.49 (5) and 102.59.

(6) If an employee or dependent shall, at the time of injury, or at the time the employee's or dependent's right accrues, be under 18 years of age, the limitations of time within which the employee or dependent may file application or proceed under this chapter, if they would otherwise sooner expire, shall be extended to one year after the employee or dependent attains the age of 18 years. If, within any part of the last year of any such period of limitation, an employee, the employee's legal representative, or surviving dependent be insane or on active duty in the armed forces of the United States such period of limitation shall be extended to 2 years after the date that the limitation would otherwise expire. The provision hereof with respect to persons on active duty in the armed forces of the United States shall apply only where no applicable federal statute is in effect.

(7) (a) Except as provided in par. (b), in a claim under s. 102.44 (2) and (3), testimony or certified reports of expert witnesses on loss of earning capacity may be received in evidence and considered with all other evidence to decide on an employee's actual loss of earning capacity.

(b) Except as provided in par. (c), the division shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by the party that raises the issue of loss of earning capacity if that party failed to notify the division and the other parties of interest, at least 60 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved. Except as provided in par. (c), the division shall exclude from evidence testimony or certified reports from expert witnesses unopposed by the other party under par. (a) offered by a party of interest in response to the party that raises the issue of loss of earning capacity if the responding party failed to notify the division and the other parties of interest, at least 45 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved.

(c) Notwithstanding the notice deadlines provided in par. (b), the division may receive in evidence testimony or certified reports from expert witnesses under par. (a) when the applicable notice deadline under par. (b) is not met if good cause is shown for the delay in providing the notice required under par. (b) and if no party is prejudiced by the delay.

(8) Unless otherwise agreed to by all parties, an injured employee shall file with the division and serve on all parties at least 15 days before the date of the hearing an itemized statement of all medical expenses and incidental compensation under s. 102.42 claimed by the injured employee. The itemized statement shall include, if applicable, information relating to any travel expenses incurred by the injured employee in obtaining treatment including the injured employee's destination, number of trips, round trip mileage, and meal and lodging expenses. The division may admit to evidence any information relating to medical expenses and incidental compensation under s. 102.42 claimed by an injured employee if the injured employee failed to file with the division and serve on all parties at least 15 days before the date of the hearing an itemized statement of the medical expenses and incidental compensation under s. 102.42 claimed by the injured employee, unless the division is satisfied that there is good cause for the failure to file and serve the itemized statement.

Cross-reference: See also ch. DWD 80, Wis. adm. code.

A plaintiff—employer was not deprived of any substantial due process rights by the defendant's refusal to invite its own medical expert to attend the hearing, and to introduce its own medical reports when the plaintiff had ample notice of the nature of the employee's claim. Theodore Fleisner, Inc. v. DILHR, 65 Wis. 2d 317, 222 N.W.2d 600 (1974).

Under the facts of the case, a refusal to grant an employer's request for adjournment was a denial of due process. Bituminous Casualty Co. v. DILHR, 97 Wis. 2d 793, 295 N.W.2d 183 (App. Ct. 1980).

Sub. (1) (d) does not create a presumption that evidence presented by treating physicians is correct. The statute enforces the idea that LIRC determines the weight to be given medical witnesses. Conradt v. Mt. Carmel School, 197 Wis. 2d 66, 539 N.W.2d 713 (Ct. App. 1995), 94−281.

LIRC's authority under sub. (1) (a) to control its calendar and manage its internal affairs necessarily implies the power to deny an applicant's motion to withdraw an application for hearing. An appellant's failure to appear at a hearing after a motion to withdraw the application was denied was grounds for entry of a default judgment under s. 102.18 (1) (a). Baldwin v. LIRC, 228 Wis. 2d 601, 599 N.W.2d 8 (Ct. App. 1999), 99−2009.

In the absence of testimony in conflict with a claimant's medical experts, LIRC may reject the expert evidence if there is countervailing testimony raising legitimate doubt about the employee's injury. Kowalchuk v. LIRC, 2000 WI App 85, 254 Wis. 2d 203, 610 N.W.2d 122, 99−1183.

It was reasonable for LIRC to conclude that the statute of limitations under sub. (4) for medical benefits begins to run on the date of death, rather than at the date of injury. International Paper Co. v. LIRC, 2001 WI App 248, 248 Wis. 2d 348, 635 N.W.2d 823, 91−0126.

Neither sub. (1) (g) or (d) provides a statutory right to cross−examine an independent physician appointed by the department when the legislature drafted sub. (1) (g), it chose to use the general term "rebut." Because it did not specify the right to cross−examination, it appears the legislature left to the department discretion whether to allow cross−examination in circumstances where it might provide relevant and probative evidence. Sub. (1) (d) governs experts that are presented by a party to establish an issue in dispute, and does not provide a right to cross−examination. Sub. (1) (g) provides a right to cross−examination under special circumstances, and does not, in that context, provide a right to cross−examination.

LIRC did not violate the plaintiff's due process rights when it declined to allow cross−examination. Aurora Consolidated Health Care v. Labor and Industry Review Commission, 2012 WI 49, 340 Wis. 2d 367, 814 N.W.2d 824, 10−0208.

(3) (a) If it is established by the certified report of a physician, podiatrist, surgeon, psychologist, or chiropractor under s. 102.17 (1) (d) 1., a record of a hospital or sanatorium under s. 102.17 (1) (d) 2., or other competent evidence that an injured employee has incurred permanent disability, but that a percentage of that disability was caused by an accidental injury sustained in the course of employment with the employer against whom compensation is claimed and a percentage of that disability was caused by other factors, whether occurring before or after the time of the accidental injury, the employer shall be liable only for the percentage of permanent disability that was caused by the accidental injury. If, however, previous permanent disability is attributable to occupational exposure with the same employer, the employer is also liable for that previous permanent disability so established.

(b) A physician, podiatrist, surgeon, psychologist, or chiropractor who prepares a certified report under s. 102.17 (1) (d) 1. relating to a claim for compensation for an accidental injury causing permanent disability that was sustained in the course of employment with the employer against whom compensation is claimed shall address in the report the issue of causation of the disability and shall include in the report an opinion as to the percentage of permanent disability that was caused by the accidental injury and the percentage of permanent disability that was caused by other factors, including occupational exposure with the same employer, whether occurring before or after the time of injury.

(c) Upon request of the department, the division, the employer, or the employer’s worker’s compensation insurer, an injured employee who claims compensation for an injury causing permanent disability shall disclose all previous findings of permanent disability or other impairments that are relevant to that injury.

History: 1979 c. 278; 1991 a. 81; 2015 a. 55; 180; s. 35.17 correction in (3) (a).

102.18 Findings, orders and awards. (1) (a) All parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but disposition of application may be made by compromise, stipulation, agreement, or default without hearing.

(b) 1. Within 90 days after the final hearing and close of the record, the division shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state the division’s determination as to the rights of the parties. Pending the final determination of any controversy before it, the division, after any hearing, may, in its discretion, make interlocutory findings, orders, and awards, which may be enforced in the same manner as final awards.

2. The division may include in any interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve the employee from the effects of the injury or to pay for a future course of instruction or other rehabilitation training services provided under a rehabilitation training program developed under s. 102.61 (1) or (1m).

3. If the division finds that the employer or insurer has not paid any amount that the employer or insurer was directed to pay in any interlocutory order or award and that the nonpayment was not in good faith, the division may include in its final award a penalty not exceeding 25 percent of each amount that was not paid as directed.

4. When there is a finding that the employee is in fact suffering from an occupational disease caused by the employment of the employer against whom the application is filed, a final award dismissing the application upon the ground that the applicant has suffered no disability from the disease shall not bar any claim the employee may have for disability sustained after the date of the award.

(bg) 1. If the division finds under par. (b) that an insurer or self−insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but that the reasonableness of the fee charged by the health service provider is in dispute, the division may include in its order under par. (b) a determination made by the department under s. 102.16 (2) as to the reasonableness of the fee or, if such a determination has not yet been made, the division may notify, or direct the insurer or self−insured employer to notify, the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute.

2. If the division finds under par. (b) that an employer or insurance carrier is liable under this chapter for any treatment provided to an injured employee by a health service provider, but that the necessity of the treatment is in dispute, the division may include in its order under par. (b) a determination made by the department under s. 102.16 (2m) as to the necessity of the treatment or, if such a determination has not yet been made, the division may notify, or direct the employer or insurance carrier to notify, the health service provider under s. 102.16 (2m) (b) that the necessity of the treatment is in dispute.

3. If the division finds under par. (b) that an insurer or self−insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but that the reasonableness of the amount charged for that prescription drug is in dispute, the division may include in its order under par. (b) a determination made by the department under s. 102.425 (4m) as to the reasonableness of the prescription drug charge or, if such a determination has not yet been made, the division may notify, or direct the insurer or self−insured employer to notify, the pharmacist or practitioner dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness of the prescription drug charge is in dispute.

(bp) If the division determines that the employer or insurance carrier suspended, terminated, or failed to make payments or failed to report an injury as a result of malice or bad faith, the division may include a penalty in an award to an employee for each event or occurrence of malice or bad faith. That penalty is the exclusive remedy against an employer or insurance carrier for malice or bad faith. If the penalty is imposed for an event or occurrence of malice or bad faith that causes a payment that is due an injured employee to be delayed in violation of s. 102.22 (1) or overdue in violation of s. 628.46 (1), the division may not also order an increased payment under s. 102.22 (1) or the payment of interest under s. 628.46 (1). The division may award an amount that the division considers just, not to exceed the lesser of 200 percent of total compensation due or $30,000 for each event or occurrence of malice or bad faith. The division may assess the penalty against the employer, the insurance carrier, or both. Neither the employer nor the insurance carrier is liable to reimburse the other for the penalty amount. The division may, by rule, define actions that demonstrate malice or bad faith.

(bw) If an insurer, a self−insured employer, or, if applicable, the uninsured employers fund pays compensation to an employee in excess of its liability and another insurer or self−insured employer is liable for all or part of the excess payment, the department or the division may order the insurer or self−insured employer that is liable for that excess payment to reimburse the insurer or self−insured employer that made the excess payment or, if applicable, the uninsured employers fund.

(c) If 2 or more examiners have conducted a formal hearing on a claim and are unable to agree on the order or award to be issued, the decision shall be the decision of the majority. If the examiners are equally divided on the decision, the division may appoint an additional examiner who shall review the record and consult with the other examiners concerning their impressions of the credibility of the evidence. Findings of fact and an order or award may then be issued by a majority of the examiners.

(d) Any award which falls within a range of 5 percent of the highest or lowest estimate of permanent partial disability by a practitioner which is in evidence is presumed to be a reasonable award, provided it is not higher than the highest or lower than the lowest estimate in evidence.

(e) Except as provided in s. 102.21, if the department or the division orders a party to pay an award of compensation, the party shall pay the award no later than 21 days after the date on which
the order is mailed to the last-known address of the party, unless the party files a petition for review under sub. (3). This paragraph applies to all awards of compensation ordered by the department or the division, whether the award results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department or the division.

(2) (a) The department shall have and maintain on its staff such examiners as are necessary to hear and decide claims for compensation described in s. 102.16 (1) (b) and to assist in the effective administration of this chapter.

(b) The division shall have and maintain on its staff such examiners as are necessary to decide claims for compensation described in s. 102.16 (1) (c) and to assist in the effective adjudication of claims under this chapter.

(c) Examiners under pars. (a) and (b) shall be attorneys and may be designated as administrative law judges. Those examiners may make findings and orders and may approve, review, set aside, modify, or confirm stipulations of settlement or compromises of claims for compensation.

(3) A party in interest may petition the commission for review of an examiner’s decision awarding or denying compensation if the department, the division, or the commission receives the petition within 21 days after the department or the division mailed a copy of the examiner’s findings and order to the last-known addresses of the parties in interest. The commission shall dismiss a petition that is not filed within those 21 days unless the petitioner shows that the petition was filed late for a reason that was beyond the petitioner’s control. If no petition is filed within those 21 days, the findings or order shall be considered final unless as set aside, reversed, or modified by the examiner within that time. If the findings or order are set aside by the examiner, the status shall be the same as prior to the setting aside of the findings or order. If the findings or order are reversed or modified by the examiner, the time for filing a petition commences on the date on which notice of the reversal or modification is mailed to the last-known addresses of the parties in interest. The commission shall either affirm, reverse, set aside, or modify the findings or order, in whole or in part, or direct the taking of additional evidence. The commission’s action shall be based on a review of the evidence submitted.

(4) (a) Unless the liability under s. 102.35 (3), 102.43 (5), 102.49, 102.57, 102.58, 102.59, 102.60 or 102.61 is specifically mentioned, the order, findings or award are deemed not to affect such liability.

(b) Within 28 days after the date of a decision of the commission, the commission may, on its own motion, set aside the decision for further consideration.

(c) On its own motion, for reasons it deems sufficient, the commission may set aside any final order or award of the commission or examiner within one year after the date of the order or award, upon grounds of mistake or newly discovered evidence, and, after further consideration, do any of the following:

1. Affirm, reverse or modify, in whole or in part, the order or award.

2. Reinstate the previous order or award.

3. Remand the case to the department or the division for further proceedings.

(d) While a petition for review by the commission is pending or after entry of an order or award by the commission but before commencement of an action for judicial review or expiration of the period in which to commence an action for judicial review, the commission shall remand any compromise presented to it to the department or the division for consideration and approval or rejection under s. 102.16 (1). Presentation of a compromise does not affect the period in which to commence an action for judicial review.

(5) If it appears to the division that a mistake may have been made as to cause of injury in the findings, order, or award upon an alleged injury based on accident, when in fact the employee was suffering from an occupational disease, within 3 years after the date of the findings, order, or award the division may, on its own motion, with or without hearing, set aside the findings, order or award, or the division may take that action upon application made within those 3 years. After an opportunity for hearing, the division may, if in fact the employee is suffering from disease arising out of the employment, make new findings, and a new order or award, or the division may reinstate the previous findings, order, or award.

(6) In case of disease arising out of employment, the commission may from time to time review its findings, order, or award, and make new findings, or a new order or award, based on the facts showing disabling or otherwise those facts may appear at the time of the review. This subsection shall not affect the application of the limitation in s. 102.17 (4).


Cross-reference: See also LIRC and s. HA 4.04, Wis. adm. code.

Committee Note, 1971: The intent is to authorize the commission within its abso- lute discretion to reopen final orders on the basis of newly discovered evi- dence within a period of one year after the date of such order. The order or award where the mistake alleged is of such a nature as to be just. It is intended that the commission have authority to grant or deny compensa- tion, including the right to increase or to decrease benefits previously awarded. [Bill 371–A]

Interlocutory orders issued by the department in worker’s compensation cases are not res judicata. Vorsch v. DILHR, 46 Wis. 2d 504, 175 N.W.2d 201 (1970).

The department reverses an examiner’s findings and orders when the findings, the latter should be accompanied by a memorandum opinion indicating not only prior consultation with the examiner and review of the record, but a statement of the reasons for reaching a different result or conclusion, particularly when the credibility of witnesses is involved. Transamerica Insurance Co. v. DILHR, 54 Wis. 2d 272, 195 N.W.2d 656 (1972). See also Mervosh v. LIRC, 2010 WI App 36, 314 Wis. 2d 134, 781 N.W.2d 236, 0271–A.

The department could properly find no permanent disability in the case of a successful fusion of vertebral and still retain jurisdiction to determine future disability when doctors testified that there might be future effects. Vernon County v. DILHR, 214 N.W.2d 302 (1974).

To show bad faith under sub. (1) (bp) a claimant must show that the employer acted without a reasonable basis for the delay and with knowledge or a reckless disregard of the lack of reasonable basis for the delay. North American Mechanical v. LIRC, 157 Wis. 2d 801, 460 N.W.2d 835 (Ct. App. 1990).
After the commission makes a final order and the review period has passed, the commission’s decision is final for all purposes. Kwaterski v. LIRC, 158 Wis. 2d 112, 462 N.W.2d 534 (Ct. App. 1990).

The commission does not authorize LIRC to take administrative notice of any fact; review is limited to the record before the hearing examiner. Amsol, Inc. v. LIRC, 173 Wis. 2d 154, 496 N.W.2d 150 (Ct. App. 1992).

The commission may not reject a medical opinion absent something in the record to support the rejection; countervailing expert testimony is not required in all cases. Leist v. LIRC, 183 Wis. 2d 450, 515 N.W.2d 268 (Ct. App. 1994).

Issuance of a default order under sub. (1) (a) is discretionary. Rules of civil procedure and the administrative procedural rules. Nothing in the law requires a default order must be issued in the absence of excusable neglect. Verhaagh v. LIRC, 204 Wis. 2d 678, 555 N.W.2d 96, 00−0070.

The commission may not rule on and consider issues on appeal that were not litigated and may not consider evidence not considered by the administrative law judge unless the parties are allowed to offer rebuttal evidence. Wright v. LIRC, 210 Wis. 2d 289, 565 N.W.2d 322 (Ct. App. 1997), 98−1024.

LIRC’s authority under s. 102.17 (1) (a) to control its calendar and manage its internal affairs necessarily implies the power to deny an applicant’s motion to withdraw an application for hearing. An applicant’s failure to appear at a hearing after a motion to withdraw the application was denied was grounds for entry of a default judgment under sub. (1) (a). Baldwin v. LIRC, 228 Wis. 2d 601, 599 N.W.2d 8 (Ct. App. 1999), 98−3090.

Under s. 102.23 (1) (a), judicial review is available only from an order or award granting or denying compensation. Judicial review is not available for a claim that LIRC failed to act within the statutory time limitations under sub. (4), which would be subject to judicial review of any subsequent order or award granting or denying compensation in that case. Vidal v. LIRC, 2002 WI 72, 253 Wis. 2d 426, 645 N.W.2d 870, 00−3548.

To demonstrate bad faith under sub. (1) (bp), a claimant must show the absence of a reasonable basis for denying benefits and the defendant’s knowledge of or reckless disregard of the lack of a reasonable basis for denying the claim. Brown v. LIRC, 2003 WI 142, 267 Wis. 2d 31, 671 N.W.2d 279, 02−1249.

Because sub. (1) (bp) specifically allows for imposition of bad faith penalties on an employer for failure to pay benefits, and because s. 102.23 (5) specifically directs the employer to pay benefits pending an appeal when the only issue is who will pay, an employer may be subject to bad faith penalties under sub. (bp), independent of its insurer, when it fails to pay benefits in accordance with s. 102.23 (5). Bosco v. LIRC, 2004 WI 77, 272 Wis. 2d 586, 661 N.W.2d 157, 03−0666.

Sub. (1) (bp) specifically allows for imposition of bad faith penalties in excess of the highest judicially acceptable assessment in evidence, but rather creates a presumption of reasonableness for awards that fall within the prescribed range. The statute does not state that an award outside of the prescribed range and does not prohibit DWD from setting minimum loss of use percentages by administrative rule. Daimler Chrysler Corp. v. LIRC, 2001 WI 72, 217 Wis. 2d 727, 7 N.W.2d 101, 05−0514.

Sub. (1) (bp) does not govern the conduct of the department or its agent and does not impose any penalty on the department or its agent for bad faith conduct in administering the uninsured employers fund. Sub. (1) (bp) constitutes the exclusive remedy for the bad faith conduct of an employer or an insurance carrier. Because sub. (1) (bp) does not apply to the department’s agent, it does not provide an exclusive remedy for the bad faith conduct of an insurance carrier. Moreover, s. 102.81 (1) (a) exempts the department and its agent from paying an employee the statutory penalties and interest imposed on an employer or an insurance carrier for their misdemeanors, but nothing in s. 102.81 (1) (a) exempts the department or its agent from liability to a third party for the third party’s bad faith conduct in processing claims. Askoxon v. Gallagher Bassett Services, Inc. 2007 WI 39, 300 Wis. 2d 92, 729 N.W.2d 712, 04−2588.

Because the parties explicitly stated the only claim against the employer was for accidental injury, the employer could not “know the charges or claims” against it included an occupational disease claim. It never had an opportunity to be heard on a claim which the employee brought in the course of an occupational disease claim, or on the legal applicable to the occupational disease claim, either during the hearing or in its brief to the commission. As such, the employer was denied both the “fair hearing” under sub. (1) (a). Waste Management Environmen- tal v. LIRC, 2008 WI App 50, 308 Wis. 2d 763, 747 N.W.2d 782, 07−2405.

Once a permanent partial disability award is made, the worker’s compensation stat- ute provides for the right to appeal and for a subsequent provision for reopening of a final award two years after it is rendered in the event the employer rehires the employee. Schreiber Foods, Inc. v. LIRC, 2009 WI App 40, 316 Wis. 2d 516, 750 N.W.2d 850, 08−1977.

Case law appears to define an order “awarding or denying compensation” in sub. (3) synonymously with an order reaching the merits of the applicant’s claim. Although the administrative decisions in this case contemplated the possibility of future action by the claimant, the dismissal was not procedural or rooted in standing doctrine like ripeness but based on a finding that the claimant presented insufficient evidence of any substantial claim. Lathere v. Wausau Insurance Companies, 2010 WI App 148, 330 Wis. 2d 101, 793 N.W.2d 77, 09−1628.

Seizure of the provisions of the federal bankruptcy code from an employer’s obligation to pay claims, including worker’s compensation, that were not due at the time of the employer’s bankruptcy filing. Accordingly, obligations that became due after the employer’s bankruptcy default and no late-payment penalty could be assessed. World Sports, Inc. v. LIRC, 2011 WI App 86, 343 Wis. 2d 517, 819 N.W.2d 850, 11−2636.

102.19 Alien dependents; payments through consular officers. In case a deceased employee, for whose injury or death compensation is payable, leaves surviving alien dependents residing outside of the United States, the duly accredited consular officer of the country of which such dependents are citizens or such officer’s designated representative residing within the United States, except as otherwise determined by the department, be the sole representative of the deceased employee and dependents in all matters pertaining to their claims for compensation. The receipt by such officer or agent of compensation funds and the distribution thereof shall be made only upon order of the department, and payment to such officer or agent pursuant to any such order shall be a full discharge of the benefits or compensation. Such consular officer or such officer’s representative shall furnish, if required by the department, a bond to be approved by it, conditioned upon the proper application of all moneys received by such person. Before such bond is discharged, such consular officer or representative shall file with the department a verified account of the items of his or her receipts and disbursements of such compensation. Such consular officer or representative shall make interim reports to the department as it may require.

History: 1977 c. 29.

102.195 Employees confined in institutions; payment of benefits. In case an employee is adjudged mentally ill or incompetent or convicted of a felony, and is confined in a public institution and has wholly dependent upon the employee for support a person whose dependency is determined as if the employee were deceased, compensation payable during the period of the employee’s confinement may be paid to the employee and the employee’s dependents in such manner, for such time, and in such amount as the department or division by order provides.

History: 1993 a. 492; 2015 a. 55.

102.20 Judgment on award. If any party presents a certified copy of the award to the circuit court for any county, the court shall, without notice, render judgment in accordance with the award. A judgment rendered under this section shall have the same effect as though rendered in an action tried and determined by the court, and shall, with like effect, be entered in the judgment and lien docket.


“Award” under this section means an award that has become final under s. 102.18 (3). Warren v. Link Farms, Inc. 123 Wis. 2d 485, 368 N.W.2d 688 (Ct. App. 1985).

102.21 Payment of awards by local governmental units. When an award is made under this chapter or s. 66.191, 1981 stats., against any local governmental unit, the person in whose favor the award is made shall file a certified copy of the award with the clerk of the local governmental unit. Unless an appeal is taken, within 20 days after filing that filing, the clerk shall draw an order on the treasurer of the local governmental unit for the payment of the award. If upon appeal the award is affirmed in whole or in part, the clerk shall draw an order for payment of the award within 10 days after a certified copy of the judgment affirming the award is filed with that clerk. If the award or judgment provides for more than one payment, the clerk shall draw orders for payment as the payments become due. No statute relating to the filing of claims against, or the collection of, any money, and payment of claims by, a local governmental unit applies to the payment of an award or judgment under this section.

History: 1983 a. 191 s. 6; 2015 a. 55, 180.

102.22 Penalty for delayed payments; interest. (1) If the employer or his or her insurer inexcusably delays in making the first payment that is due an injured employee for more than 30 days after the date on which the employee leaves work as a result of an injury and if the amount due is $500 or more, the payments as to which the delay is found shall be increased by 10 percent. If the employer or his or her insurer inexcusably delays in making the first payment that is due an injured employee for more than 14 days after the date on which the employee leaves work as a result of an injury, the payments as to which the delay is found may be increased by 10 percent. If the delay is chargeable to the employer and not to the insurer, s. 102.62 applies and the relative liability of the parties shall be fixed and discharged as provided in that section. The department or the division may also order the employer or insurance carrier to reimburse the employee for any finance charges, collection charges, or inter-
est that the employee paid as a result of the inexcusable delay by the employer or insurance carrier.

(2) If any sum that the department or the division orders to be paid is not paid when due, that sum shall bear interest at the rate of 10 percent per year. The state is liable for interest on awards issued against it under this chapter. The department or the division has jurisdiction to issue an award for payment of interest under this subsection at any time within one year after the date of its order or, if the order is appealed, within one year after final court determination. Interest awarded under this subsection becomes due from the date the examiner’s order becomes final or from the date of a decision by the commission, whichever is later.

(3) If upon petition for review the commission affirms an examiner’s order, interest at the rate of 7 percent per year on the amount ordered by the examiner shall be due for the period beginning on the 21st day after the date of the examiner’s order and ending on the date paid under the commission’s decision. If upon petition for judicial review under s. 102.23 the court affirms the commission’s decision, interest at the rate of 7 percent per year on the amount ordered by the examiner shall be due up to the date of the commission’s decision, and thereafter interest shall be computed under sub. (2).

History: 1977 c. 150; 1975 c. 110 s. 60 (13); 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1993 a. 81; 2015 a. 55.

The department can assess the penalty for inexcusable delay in making payments prior to the entry of an order. The question of whether an inexcusable delay is one of law and the courts are not bound by the department’s finding as to it. Milwaukee County v. DILHR, 48 Wis. 2d 392, 180 N.W.2d 513 (1970).


102.23 Judicial review. (1) (a) 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order, or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on the order or award or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. The commission shall identify in the order or award the persons that must be made parties to an action for review of the order or award.

2. Within 30 days after the date of an order or award made by the commission, any party aggrieved by the order or award may commence an action in circuit court for review of the order or award by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court. The summons and complaint shall name the party commencing the action as the plaintiff and shall name as defendants the commission and all persons identified by the commission under sub. 1. If the circuit court determines that any other person is necessary for the proper resolution of the action, the circuit court may join that person as a party to the action, unless joinder of the person would unduly delay the resolution of the action. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, the circuit court may extend the time within which an action may be commenced by an additional 30 days.

3. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

(b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon a commissioner or agent authorized by the commission to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.

(c) The commission shall serve its answer to the complaint within 20 days after the service of the complaint. Except as pro-vided in par. (cm), any other defendant may serve an answer to the complaint within 20 days after the service of the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order or award.

(cm) If a defendant in an action brought under par. (a) is an insurance company, the insurance company may serve an answer to the complaint within 45 days after the service of the complaint.

(d) The commission shall make return to the court of all documents and papers on file in the matter, all testimony that has been taken, and the commission’s order, findings, and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers specified in s. 809.15, constitute a judgment roll in the action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before the court upon the record by any party on 10 days’ notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

(e) Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the commission acted without or in excess of its powers.

2. That the order or award was procured by fraud.

3. That the findings of fact by the commission do not support the order or award.

(2) Upon the trial of an action for review of an order or award the court shall disregard any irregularity or error of the commission, the department, or the division unless it is made affirmatively to appear that the plaintiff was damaged by that irregularity or error.

(3) The record in any case shall be transmitted to the department or the division within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from that order or judgment.

(4) Whenever an award is made against the state the attorney general may bring an action for review thereof in the same manner and upon the same grounds as are provided by sub. (1).

(5) When an action for review involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies, a party that has been ordered by the department, the division, the commission, or a court to pay compensation is not relieved from paying compensation as ordered.

(6) If the commission’s order or award depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission’s order or award and remand the case to the commission if the commission’s order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.


Judicial Council Committee’s Note, 1976: The procedure for initiating a petition for judicial review under ch. 102 is governed by the provisions of s. 102.23 rather than the provisions for initiating a civil action under s. 801.02. [Re Order effective Jan. 1, 1977].

The fact that a party appealing from a DILHR order as to unemployment compensation labeled his petition “under 227.15” [now 227.52], is immaterial since the employee paid as a result of the inexcusable delay by the employer or insurance carrier.
from the application of rules or concepts of law to those facts whether undisputed or not. Kress Packing Co. v. Kottwitz, 61 Wis. 2d 175, 212 N.W.2d 97 (1973).

A challenge to the constitutionality of sub. (1) was not sustained since it is manifest from the express terms of the statute that the legislature intended to make the decision in interest and not a mere nominal party. Hunter v. DILHR, 64 Wis. 2d 97, 218 N.W.2d 314 (1974).

When the claimant timely appealed an adverse worker’s compensation decision in good faith, but erroneously captioned the appeal, the trial court abused its discretion by dismissing the action. Cruz v. DILHR, 81 Wis. 2d 442, 260 N.W.2d 692 (1978).

An employer whose uncompensated compensation account is not affected by the commission’s order or award granting the commission’s right to any settlement or compromise that the parties may desire to have made a defendant by naming the defendant’s insurer in the caption of the summons, complaint, which were timely filed and served even though the insurer was not made a party to the action. Wisconsin Electric Power Co. v. Labor and Industry Review Commission, 222 Wis. 2d 778, 595 N.W.2d 23 (1999), 97–2747.

A LIRC decision is to be upheld unless it directly contradicts the words of the statute. Wisconsin Electric Power Co. v. Labor and Industry Review Commission, 222 Wis. 2d 778, 595 N.W.2d 23 (1999), 97–2747.

A clause to an order or award shall be made a party to the action when the insurer was not made a party to the action. Wisconsin Electric Power Co. v. Labor and Industry Review Commission, 222 Wis. 2d 778, 595 N.W.2d 23 (1999), 97–2747.

A decision of an administrative agency may be appealed to the circuit court only if the agency’s decision is final and not an intermediate order. Wisconsin Personnel Associates v. DILHR, 92 Wis. 2d 53, 284 N.W.2d 706 (Ct. App. 1979).

An agency’s mixed conclusions of law and facts may be analyzed by using the de novo analytical method of separating law from fact or by the practical or policy method that avoids law and fact labels and searches for a rational basis for the agency’s decision. United Way of Greater Milwaukee v. DILHR, 105 Wis. 2d 447, 317 N.W.2d 538 (Ct. App. 1981).

A failure to properly serve the commission pursuant to sub. (1) (b) results in a jurisdictional defect rather than a mere technical error. Gomez v. Labor and Industry Review Commission, 253 Wis. 2d 669, 586 N.W.2d 475 (Ct. App. 1998).

Discretionary reversal is not applicable to judicial review of LIRC orders under ch. 102. There is no power to reopen a matter that has been fully determined under ch. 102. Kwaterski v. Labor and Industry Review Commission, 158 Wis. 2d 112, 462 N.W.2d 534 (Ct. App. 1990).

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An agency’s mixed conclusions of law and facts may be analyzed by using the de novo analytical method of separating law from fact or by the practical or policy method that avoids law and fact labels and searches for a rational basis for the agency’s decision. United Way of Greater Milwaukee v. DILHR, 105 Wis. 2d 447, 317 N.W.2d 538 (Ct. App. 1981).

A failure to properly serve the commission pursuant to sub. (1) (b) results in a jurisdictional defect rather than a mere technical error. Gomez v. Labor and Industry Review Commission, 253 Wis. 2d 669, 586 N.W.2d 475 (Ct. App. 1998).

Discretionary reversal is not applicable to judicial review of LIRC orders under ch. 102. There is no power to reopen a matter that has been fully determined under ch. 102. Kwaterski v. Labor and Industry Review Commission, 158 Wis. 2d 112, 462 N.W.2d 534 (Ct. App. 1990).

A LIRC decision is to be upheld unless it directly contradicts the words of the statute. Wisconsin Electric Power Co. v. Labor and Industry Review Commission, 222 Wis. 2d 778, 595 N.W.2d 23 (1999), 97–2747.
2. At the request of the claimant medical expense, witness fees and other charges associated with the claim may be ordered paid out of the amount awarded.

3. The claimant may request the insurer or self-insured employer to pay any compensation that is due the claimant by depositing the payment directly into an account maintained by the claimant at a financial institution. If the insurer or self-insured employer agrees to the request, the insurer or self-insured employer may deposit the payment by direct deposit, electronic funds transfer, or any other money transfer technique approved by the department or the division. The claimant may revoke a request under this subdivision at any time by providing appropriate written notice to the insurer or self-insured employer.

(c) Payment according to the directions of the award shall protect the employer and the employer’s insurer, or the uninsured employers fund if applicable, from any claim of attorney’s lien.

4. Any attorney or other person who charges or receives any fee in violation of this section may be required to forfeit double the amount retained by the attorney or other person, which forfeiture shall be collected by the state in an action in debt upon complaint of the department or the division. Out of the sum recovered the court shall direct payment to the injured party of the amount of the overcharge.

History:

Cross-reference: See also s. DWD 80.43, Wis. adm. code.

The only fee authorized to be paid to any clerk of court under sub. (1) is the fee under s. 814.61 (5), when applicable. 76 Atty. Gen. 148.

102.27 Claims and awards protected; exceptions.

(1) Except as provided in sub. (2), no claim for compensation shall be assignable, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, or paid, be taken for the debts of the party entitled thereto.

(2) (a) A benefit under this chapter is assignable under s. 46.10 (14) (e), 49.345 (14) (e), 301.12 (14) (e), 767.225 (1) (L), 767.513 (3), or 767.75 (1) or (2m).

(b) If a governmental unit provides public assistance under ch. 49 to pay medical costs or living expenses related to a claim arising out of this chapter and if the governmental unit has given the parties to the claim written notice stating that the governmental unit provided the assistance and the cost of that assistance, the department or the division shall order the employer or insurance carrier owing compensation to reimburse that governmental unit for the amount of assistance the governmental unit provided or two-thirds of the amount of the award or payment remaining after deduction of attorney fees and any other fees or costs chargeable under ch. 102, whichever is less. The department shall comply with this paragraph when making payments under s. 102.81.

History:

102.28 Preference of claims; worker’s compensation insurance.

(1) PREFERENCE. The whole claim for compensation for the injury or death of any employee or any award or judgment thereon, and any claim for unpaid compensation insurance premiums are entitled to preference in bankruptcy or insolvency proceedings as is given creditors’ actions except as denied or limited by any law of this state or by the federal bankruptcy act, but this section shall not impair the lien of any judgment entered upon any award.

(2) REQUIRED INSURANCE; EXCEPTIONS. (a) Duty to insure payment for compensation. Unless exempted under par. (b) or (bm) or sub. (3), every employer, as described in s. 102.04 (1), shall insure payment for compensation under this chapter in an insurer authorized to do business in this state. A joint venture may elect to be an employer under this chapter and obtain insurance for payment of compensation. If a joint venture that is subject to this chapter only because the joint venture elected to be an employer under this chapter is dissolved and cancels or terminates its contract for the insurance of compensation under this chapter, that joint venture is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

(b) Exemption from duty to insure; employers generally. The department may grant a written order of exemption to an employer who shows its financial ability to pay the amount of compensation, agrees to report faithfully all compensable injuries and agrees to comply with this chapter and the rules of the department. The department may condition the granting of an exemption upon the employer’s furnishing of satisfactory security to guarantee payment of all claims under compensation. The department may require that bonds or other personal guarantees be enforceable against sureties in the same manner as an award may be enforced. The department may from time to time require proof of financial ability of the employer to pay compensation. Any exemption shall be void if the application for it contains a financial statement which is false in any material respect. An employer who files an application containing a false financial statement remains subject to par. (a). The department may promulgate rules establishing an amount to be charged to an initial applicant for exemption under this paragraph and an annual amount to be charged to employers that have been exempted under this paragraph.

(bm) Exemption from duty to insure; governmental employers. 1. Subject to subs. 2. to 4., if the state or a local governmental unit that has independent taxing authority is not partially insured or fully insured for its liability for the payment of compensation under this chapter, or to the extent that the state or a local governmental unit that has independent taxing authority is not partially insured for that liability under one or more contracts issued with the consent of the department under s. 102.31 (1) (b), and if the state or local governmental unit agrees to report faithfully all compensable injuries and to comply with this chapter and all rules of the department, the state or local governmental unit may elect to self-insure that liability without further order of the department.

2. Notwithstanding the absence of an order of exemption from the duty to insure under par. (a), the state or a local governmental unit that elects to self-insure as provided in subd. 1. is exempt from that duty. Notwithstanding that exemption, if the state or a local governmental unit that elects to self-insure as provided in subd. 1. desires partial insurance or divided insurance, the state or local governmental unit shall obtain the consent of the department under s. 102.31 (1) (b) to the issuance of a contract providing such insurance.

3. a. A local governmental unit that elects to self-insure its liability for the payment of compensation under this chapter shall notify the department of that election in writing before commencing to self-insure that liability and shall notify the department of its intent to continue to self-insure that liability every 3 years after that initial notice. A local governmental unit that wishes to withdraw that election shall notify the department of that withdrawal not less than 30 days before the effective date of that withdrawal.

b. A notice under subd. 3. a. shall be accompanied by a resolution adopted by the governing body of the local governmental unit and signed by the elected or appointed chief executive of the local governmental unit stating that the governing body intends and agrees to self-insure the liability of the local governmental unit for the payment of compensation under this chapter and that the local governmental unit agrees to report faithfully all compensable injuries and to comply with this chapter and all rules of the department.

4. An election to self-insure under subd. 1. is subject to revocation under par. (c) 2. Once such an election is revoked, the employer whose election is revoked may not elect to self-insure its liability for the payment of compensation under this chapter unless at least 3 calendar years have elapsed since the revocation and the department finds that the employer’s financial condition is adequate to pay its employees’ claims for compensation, that the employer has not received an excessive number of claims for
compensation, and that the employer has faithfully discharged its obligations under this chapter and the rules of the department.

(c) Revocation of exemption or election. 1. The department, after seeking the advice of the self−insurers council, may revoke an exemption granted to an employer under par. (b), upon giving the employer 10 days’ written notice, if the department finds that the employer’s financial condition is inadequate to pay its employees’ claims for compensation, that the employer has received an excessive number of claims for compensation, or that the employer has failed to discharge faithfully its obligations according to the agreement contained in the application for exemption.

2. The department may revoke an election made by an employer under par. (b), upon giving the employer 10 days’ written notice, if the department finds that the employer’s financial condition is inadequate to pay its employees’ claims for compensation, that the employer has received an excessive number of claims for compensation, or that the employer has failed to discharge faithfully its obligations under this chapter and the rules of the department.

3. Within 10 days after receipt of a notice of revocation under subd. 1. or 2., the employer may request in writing a review of the revocation by the secretary or the secretary’s designee and the secretary or the secretary’s designee shall review the revocation within 30 days after receipt of the request for review. If the employer is aggrieved by the determination of the secretary or the secretary’s designee, the employer may, within 10 days after receipt of notice of that determination, request a hearing under s. 102.17. If the secretary or the secretary’s designee determines that the employer’s election or election should be revoked, the employer shall obtain insurance coverage as required under par. (a) immediately upon receipt of notice of that determination and, notwithstanding the pendency of proceedings under s. 102.17 to 102.25, shall keep that coverage in force until another exemption under par. (b) is granted or another election under par. (bm) is made.

(d) Effect of insuring with unauthorized insurer. If an employer that is exempted under par. (b) or (bm) from the duty to insure under par. (a) enters into any agreement for excess insurance coverage with an insurer not authorized to do business in this state, the employer shall report that agreement to the department immediately. The placing of such coverage shall not by itself be grounds for revocation of the exemption.

(e) Rules. The department shall promulgate rules to implement this subsection.

3. Provision of alternative benefits. (a) An employer may file with the department an application for exemption from the duty to pay compensation under this chapter with respect to any employee who signs the waiver described in subd. 1. and the affidavit described in subd. 2. if an authorized representative of the religious sect to which the employee belongs signs the affidavit specified in subd. 3. and the agreement described in subd. 4. An application for exemption under this paragraph shall include all of the following:

1. A written waiver by the employee or, if the employee is a minor, by the employee and his or her parent or guardian of all compensation under this chapter other than the alternative benefits provided under par. (c).

2. An affidavit by the employee or, if the employee is a minor, by the employee and his or her parent or guardian stating that the employee is a member of a recognized religious sect and that, as a result of the employee’s adherence to the established tenets or teachings of the religious sect, the employee is conscientiously opposed to accepting the benefits of any public or private insurance that makes payments in the event of death, disability, old age or retirement, or that makes payments toward the cost of or provides medical care, including any benefits provided under the federal social security act, 42 USC 301 to 1397f.

3. An affidavit by an authorized representative of the religious sect to which the employee belongs stating that the religious sect has a long−standing history of providing its members who become dependent on the support of the religious sect as a result of work−related injuries, and the dependents of those members, with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect. In determining whether the religious sect has a long−standing history of providing the financial and medical assistance described in this subdivision, the department shall presume that a 25−year history of providing that financial and medical assistance is long−standing for purposes of this subdivision.

4. The religious sect to which the employee belongs has an agreement signed by an authorized representative of the religious sect under par. (a) 1. and an affidavit under par. (b) 1. who sustains an injury that, but for the waiver under par. (a) 1., the employer would be liable for under s. 102.03.

(c) An employee who has signed a waiver under par. (a) 1. and an affidavit under par. (b) 1. who sustains an injury that, but for the waiver, the employer would be liable for under s. 102.03, at the time of the injury was a member of a religious sect whose authorized representative has filed an affidavit under par. (a) 3. and an agreement under par. (a) 4., and who as a result of the injury becomes dependent on the religious sect for financial and medical assistance, or the employee’s dependents, may request a hearing under s. 102.17 (1) to determine if the religious sect has provided the employee and his or her dependents with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect. If, after hearing, the division determines that the religious sect has not provided that standard of living or medical treatment, or both, the division may order the religious sect to provide alternative benefits to that employee or his or her dependent, or both, in an amount that is reasonable under the circumstances, but not in excess of the benefits that the employee or dependent could have received under this chapter but for the waiver under par. (a) 1.

(d) The department shall provide a form for the application for exemption of an employer under par. (a) (intro.), the waiver and affidavit of an employee under par. (a) 1. and 2., the affidavit of a religious sect under par. (a) 3. and the agreement of a religious sect under par. (a) 4. A properly completed form is prima facie evidence of satisfaction of the conditions under par. (b) as to the matter contained in the form.
2. An initial or further assessment under subd. 1. shall be pro-
rated on the basis of the gross payroll for this state of the exempt
employer as reported to the department for the previous calendar
year for unemployment insurance purposes under ch. 108 or, if an
exempt employer is not covered under ch. 108, on the basis of the
comparsiable gross payroll for the exempt employer as determined
by the department. If payment of any assessment made under subd.
1. is not made within 30 days after the date of the order
of the department, the attorney general may appear on behalf of the
state to collect the assessment.

(bm) The department may not do any of the following:

1. Require an employer that elects under sub. (2) (bm) to self-
insure its liability for the payment of compensation under this
chapter to pay into the fund established under sub. (8).

2. Make any payments from the fund established under sub.
(8) for the liability under this chapter of an employer that elects
under sub. (2) (bm) to self-insure its liability for the payment of
compensation under this chapter, whether currently or formerly
exempt from the duty to insure under sub. (2) (a).

(c) The department may retain an insurance carrier or insur-
ance service organization to process, investigate and pay valid
claims. The charge for such service shall be paid from the fund
as provided under par. (b).

(d) The department shall promulgate rules to implement this
subsection.

(8) SELF-INSURED EMPLOYERS LIABILITY FUND. The moneys
paid into the state treasury under sub. (7), together with all accrued
interest, shall constitute a separate nonlapsable fund designated as
the self-insured employers liability fund. Moneys in the fund may
be expended only as provided in s. 20.445 (1) (6) and may not be
used for any other purpose of the state.

History: 1975 c. 147; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss.
2015 a. 55, 180.

Cross-reference: See also ss. DWD 80.40 and 80.60, Wis. adm. code.

The “insurance payment” requirement of sub. (2) (a) requires an employer to provide
coverage for every employee in all possible employment situations. Substantial com-
pliance with sub. (2) (a) is not sufficient. This provision does not violate due process.


102.29 Third party liability. (1) (a) The making of a claim for
compensation against an employer or compensation insurer
for the injury or death of an employee shall not affect the right
of the employee, the employee’s personal representative, or other
person entitled to bring action to make claim or maintain an action
in tort against any other party for such injury or death, hereinafter
referred to as a 3rd party; nor shall the making of a claim by any
such person against a 3rd party for damages by reason of an injury
to which ss. 102.03 to 102.66 are applicable, or the adjustment
of any such claim, affect the right of the injured employee or the
employee’s dependents to recover compensation. An employer or
compensation insurer that has paid or is obligated to pay a lawful
claim under this chapter shall have the same right to make claim
or maintain an action in tort against any other party for the
employee’s injury or death. However, each shall give to the
other reasonable notice and opportunity to join in the making
of such claim or the instituting of an action and to be represented
by counsel.

(b) If a party entitled to notice cannot be found, the department
shall become the agent of that party for the giving of a notice as
required in par. (a) and the notice, when given to the department,
shall include an affidavit setting forth the facts, including the steps
taken to locate that party. Each party shall have an equal voice in
the prosecution of the claim, and any disputes arising shall be
passed upon by the court before whom the case is pending, and if
no action is pending, then by a court of record or by the department

2017−18 Wisconsin Statutes updated through 2019 Wis. Act 20 and through all Supreme Court and Controlled Substances
Board Orders filed before and in effect on November 7, 2019. Published and certified under s. 35.18. Changes effective after
November 7, 2019, are designated by NOTES. (Published 11−7−19)
or the division. If notice is given as provided in par. (a), the liability of the tort-feasor shall be determined as to all parties having a right to make claim and, irrespective of whether or not all parties join in prosecuting the claim, the proceeds of the claim shall be divided as follows:

1. After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employee or the employee’s personal representative or other person entitled to bring action.

2. Out of the balance remaining after the deduction and payment specified in subd. 1., the employer, the insurance carrier, or, if applicable, the uninsured employers fund or the work injury supplemental benefit fund shall be reimbursed for all payments made by the employer, insurance carrier, or department, or which the employer, insurance carrier, or department may be obligated to make in the future, except that the employer, insurance carrier, or department shall not be reimbursed for any payments made or to be made under s. 102.18 (1) (b) 3. or (bp), 102.22, 102.35 (3), 102.57, or 102.60.

3. Any balance remaining after the reimbursement described in subd. 2. shall be paid to the employee or the employee’s personal representative or other person entitled to bring action.

(c) If both the employee or the employee’s personal representative or other person entitled to bring action, and the employer, compensation insurer, or department, join in the pressing of a claim, and are represented by counsel, the attorney fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between the attorneys for those parties as directed by the court or by the department or the division.

(d) A settlement of a 3rd-party claim shall be void unless the settlement and the distribution of the proceeds of the settlement are approved by the court before whom the action is pending or, if no action is pending, then by a court of record or by the department or the division.

(2) In the case of liability of the employer or insurer to make payment into the state treasury under s. 102.49 or 102.59, if the injury or death was due to the actionable act, neglect or default of a 3rd party, the employer or insurer shall have a right of action against the 3rd party to recover the sum so paid into the state treasury, which right may be enforced either by joining in the action mentioned in sub. (1), or by independent action. Contributory negligence of the employee because of whose injury or death such payment was made shall bar recovery if such negligence was greater than the negligence of the person against whom recovery is sought, and the recovery allowed the employer or insurer shall be diminished in proportion to the amount of negligence attributable to such party.

Any action brought under this subsection may, upon order of the court, be consolidated and tried together with any action brought under sub. (1).

(3) Nothing in this chapter shall prevent an employee from taking the compensation that the employee may be entitled to under this chapter and also maintaining a civil action against any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist for malpractice.

(4) If the employer and the 3rd party are insured by the same insurer, or by the insurers who are under common control, the employer’s insurer shall promptly notify the parties in interest and the department. If the employer has assumed the liability of the 3rd party, it shall give similar notice, in default of which any settlement with an injured employee or beneficiary is void. This subsection does not prevent the employer or compensation insurer from sharing in the proceeds of any 3rd-party claim or action, as set forth in sub. (1).

(5) An insurer subject to sub. (4) which fails to comply with the notice provision of that subsection and which fails to commence a 3rd-party action, within the 3 years allowed by s. 893.54, may not plead that s. 893.54 is a bar in any action commenced by the injured employee under this section against any such 3rd party subsequent to 3 years from the date of injury, but prior to 6 years from such date of injury. Any recovery in such an action is limited to the insured liability of the 3rd party. In any such action commenced by the injured employee subsequent to the 3-year period, the insurer of the employer shall forfeit all right to participate in such action as a complaint and to recover any payments made under this chapter.

(6) (a) In this subsection, “temporary help agency” means a temporary help agency that is primarily engaged in the business of placing its employees with or leasing its employees to another employer as provided in s. 102.01 (2) (f).

(b) No employee of a temporary help agency who has the right to make a claim for compensation may make a claim or maintain an action in tort against any of the following:

1. Any employer that compensates the temporary help agency for the employee’s services.

2. Any other temporary help agency that is compensated by that employer for another employee’s services.

3. Any employee of that compensating employer or of that other temporary help agency, unless the employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

(c) No employee of an employer that compensates a temporary help agency for another employee’s services who has the right to make a claim for compensation may bring a claim or maintain an action in tort against any of the following:

1. The temporary help agency.

2. Any employee of the temporary help agency, unless the employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

3. Any employee of the client or of that other temporary help agency, unless the employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

4. Any employee of the temporary help agency, unless the employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

5. Any employee of the temporary help agency, unless the employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

6m (a) No leased employee, as defined in s. 102.315 (1) (g), who has the right to make a claim for compensation may make a claim or maintain an action in tort against any of the following:

1. The client, as defined in s. 102.315 (1) (b), that accepted the services of the leased employee.

2. Any other employee leasing company, as defined in s. 102.315 (1) (f), that provides the services of another leased employee to the client.

3. Any employee of the client or of that other employee leasing company, unless the leased employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the client or the leased employee of the other employee leasing company if the employees and leased employees were coemployees.

(b) No employee of a client who has the right to make a claim for compensation may make a claim or maintain an action in tort against any of the following:

1. An employee leasing company that provides the services of a leased employee to the client.

2. Any leased employee of the employee leasing company, unless the employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the leased employee if the employee and the leased employee were coemployees.

7. No employee who is loaned by his or her employer to another employer and who has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who accepted the loaned employee’s services.

8. No student of a public school, a private school, or an institution of higher education who is named under s. 102.077 as an employee of the school district, private school, or institution of higher education for purposes of this chapter and who has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that pro-
vided the work training or work experience from which the claim arose.

(8m) No participant in a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) who, under s. 49.147 (4) (c) or (5) (c), is provided worker’s compensation coverage by a Wisconsin works agency, as defined under s. 49.001 (9), and who has the right to make a claim or maintain an action in tort against the employer who provided the community service job or transitional placement from which the claim arose.

(8r) No participant in a food stamp employment and training program under s. 49.79 (9) who, under s. 49.79 (9) (a) 5., is provided worker’s compensation coverage by the department of health services or by a Wisconsin Works agency, as defined in s. 49.001 (9), or other provider under contract with the department of health services or a county department under s. 46.215, 46.22, or 46.23 or tribal governing body to administer the food stamp employment and training program and who has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the employment and training from which the claim arose.

(9) No participant in a work experience component of a job opportunities program, skills program, or work training or work experience from which the claim arose.

(10) No security officer employed by the department of health services or a county department under s. 46.215, 46.22, or 46.23 or tribal governing body to administer the food stamp employment and training program and who has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the work experience from which the claim arose.

This subsection does not apply to injuries occurring after February 28, 1998.

(11) No security officer employed by the department of military affairs who is employed under s. 59.26 (4m), who remains an employee of the state for purposes of worker’s compensation coverage while providing services on behalf of a health care facility, the department of health services, or a local health department during a state of emergency and who has the right to make a claim for compensation under this chapter may not make a claim or maintain an action in tort against the health care facility, department, or local health department that accepted those services.

(12) No individual who is an employee of an entity described in s. 102.07 (20) for purposes of this chapter and who has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the person described in s. 102.07 (20) who received the services from which the claim arose.

History:

NOTE: See cases annotated under s. 102.03 as to the right to bring a 3rd-party action against a coemployee.

In a 3rd-party action [now under s. 102.29], safe place liability [now under s. 101.11] cannot be imposed on officers or employees of the employer. Their liability must be measured by the common law negligence. Portowski v. Taylor, 55 Wis. 2d 615, 201 N.W.2d 52 (1972).

Members of a partnership are employers of the employees of the partnership. An employer cannot bring a 3rd-party action against a member of the employing partnership. Candler v. Hardware Dealers Mutual Insurance Co. 57 Wis. 2d 85, 203 N.W.2d 659 (1973).

Sub. (1) provides attorney fees are to be allowed as “costs of collection” and, unless otherwise agreed upon, are to be divided between the attorneys for both the employee and the compensation carrier pursuant to court direction. Diedrick v. Hartford Accident & Indemnity Co. 62 Wis. 2d 759, 216 N.W.2d 193 (1974).

The words “action commenced by the injured employee” in sub. (5) also encompass the bringing of wrongful death and survival actions. Ortman v. Jensen & John- son, Inc. 66 Wis. 2d 508, 225 N.W.2d 635 (1975).

The “3-year limitation on 3rd-party action for compensation” for wrongful death provided in sub. (5) does not deny 3rd-party defendants equal protection although other wrongful death defendants are subject to the s. 893.205 (2) 3-year limitation. Ortman v. Jensen & Johnson, Inc. 66 Wis. 2d 508, 225 N.W.2d 635 (1975).

The extra -hazardous activity exception did not apply to an employee of a general contractor who was injured while doing routine work in a nuclear power plant. Snider v. Northern States Power Co. 81 Wis. 2d 224, 260 N.W.2d 260 (1977).


Sub. (2) denies 3rd-party tort-feasors the right to a contribution action against a negligent employer who was substantially more at fault than the claimant. Kottka v. PPG Industries, Inc. 130 Wis. 2d 499, 388 N.W.2d 160 (1986).

The distribution scheme under sub. (1) renders common-law subrogation principles inapplicable. Martinez v. Ashland Oil, Inc. 132 Wis. 2d 11, 390 N.W.2d 72 (Ct. App. 1986).

When there are competing claims for insufficient insurance proceeds and one claim subject to sub. (1) allocates while the other is not, the formula set forth in this case is to be followed. Brewer v. Auto-Owners Ins. Co. 142 Wis. 2d 864, 418 N.W.2d 841 (Ct. App. 1987).

The “dual persona doctrine” is adopted, replacing the “dual capacity” doctrine. A 3rd-party may recover from an employer only when the employer has operated in a distinct person as to the employee. Henning v. General Motors Assembly, 143 Wis. 2d 499, 421 N.W.2d 551 (1988).

Unless he or she is affirmatively negligent with respect to the claimant, a person who employs an independent contractor may not be held vicariously liable to the independent contractor’s employees. Wagner v. Continental Casualty Co. 143 Wis. 2d 379, 421 N.W.2d 835 (1988).

The legal distinction between a corporation/employer and a partnership/landlord that leased the factory to the corporation, although both entities were composed of the same individuals, eliminated the partners’ immunity as individuals under the exclusivity doctrine for negligence in maintaining the leased premises. Couillard v. Van Ess, 152 Wis. 2d 62, 447 N.W.2d 391 (Ct. App. 1989).

In structured settlement situations, the “remedies” under sub. (1) from which an employee must receive the first one-third is the remainder of the front payment after deduction of collection costs. Skowriowski v. Employers Casualty Co. 158 Wis. 2d 294, 462 N.W.2d 245 (Ct. App. 1990).

Sub. (6) does not require a temporary employer to control or have the right to control the details of the work being performed. The temporary employer need only control the work activities of the temporary employee; it need not have exclusive control over the employee’s work. Gansch v. Neoskoos Papers, Inc., 158 Wis. 2d 743, 463 N.W.2d 682 (1990).

An employee’s cause of action created by a 3rd-party’s negligence does not relate back to the initial work injury, but creates a separate cause of action; the cause of action and the employer’s rights of subrogation accrue at the time of the 3rd-party negligence. Sutton v. Kaarakka, 159 Wis. 2d 83, 464 N.W.2d 29 (Ct. App. 1990).

Third-party claims under sub. (1) include wrongful death and survival actions. Ortman v. Jensen & John- son, Inc. 174 Wis. 2d 296, 496 N.W.2d 87 (1993).

An employer’s compensation insurer cannot bring a 3rd-party action against an insurer who paid a claimant under uninsured motorist coverage; uninsured motorist coverage is contractual and this section only applies to tort actions. Bema-Mork v. Jones, 174 Wis. 2d 645, 498 N.W.2d 221 (1993).

Sub. (1) does not require an interested party receiving notice of another’s 3rd-party claim to give a reciprocal notice to the defendant making the claim in order to share in the settlement proceeds. Elliot v. Employers Mut. Cas. Co. 176 Wis. 2d 410, 500 N.W.2d 397 (Ct. App. 1993).

The “dual persona doctrine” that allows an employee to sue an employer in tort when the employer was acting in a persona distinct from its employee persons is available to a temporary employee subject to sub. (6). Melzer v. Cooper Industries, Inc. 176 Wis. 2d 609, 503 N.W.2d 29 (1992).

Third-party claims under sub. (1) include wrongful death actions; settlement proceeds are subject to allocation under sub. (1). Stolper v. Owens-Corning Fiberglass Corp. 178 Wis. 2d 747, 503 N.W.2d 157 (Ct. App. 1993).
An insurer had no right to reimbursement from legal malpractice settlement proceeds arising from a failure to file a claim for a work related injury. The employee’s injury from the malpractice was the loss of a legal right not a physical injury. Smith v. Zentgraf, 197 Wis. 2d 208, 506 N.W.2d 750 (Ct. App. 1993).

Damages for a child’s loss of a parent’s society and financial support are not subject to allocation under sub. (1). Cummings v. Klawitter, 179 Wis. 2d 408, 506 N.W.2d 750 (1993).

The traditional 4−proang Seaman test for determining whether a person was a “loaned employee” subject to the exclusive remedies provisions of this chapter applies to legal malpractice cases and is not covered by sub. (6). Bauernfeind v. Zell, 190 Wis. 2d 701, 528 N.W.2d 1 (1995).

Pecuniary damages recovered in a 3rd−party wrongful death action are subject to distribution under this section. Johnson v. ABC Insurance Co. 193 Wis. 2d 35, 532 N.W.2d 130 (1995).

An insurer is entitled to reimbursement under sub. (1) from an employee’s settlement with his or her employer when the employee’s basis for liability is an indemnification claim arising from a 3rd−party tort−feasor. Schwebel v. ABC Insurance Co. 198 Wis. 2d 133, 542 N.W.2d 178 (Cl. App. 1995), 95−0662.

Sub. (5) extends the statute of limitations only when s. 893.54 is the applicable statute. It does not extend the statute of another state when it is applicable under s. 893.07. That sub. (5) only applies to cases subject to the Wisconsin statute is not unconstitutional. Bell v. Employers Casualty Co. 198 Wis. 2d 347, 541 N.W.2d 824 (Cl. App. 1995), 95−0303.

The Seaman loaned employee test has 3 elements but is often misconstrued because the Seaman court indicated that there are four “vital questions” that must be answered. The 3 elements: 1) consent by the employer, 2) entry by the employee upon work for the special employer; and 3) power in the special employer to control details of the work. When an employee of one employer assists the employees of another employer as a true volunteer, a loaned employee relationship does not result.

The appearance, whether general or special, of any such insurance carrier by agent or attorney to prosecute the action along with the employee by virtue of sub. (1). Sub. (1) gives the employee the right to demonstrate that his or her activities substantially contributed to obtaining recovery under sub. (1). Damages for that insufficiency, including a settlement by the parties. Allocating a disproportionate share of the costs of collection. On those facts, sub. (1) (c) gave the court clear authority to compel an employee to accept settlement does not violate procedures prescribed by the respective statute. In this case, the record did not contain a written fee agreement or describe the unwritten fee agreement terms with a high degree of clarity or specificity. Under those circumstances, a circuit court could not reasonably determine the reasonable value of an attorney’s services using a quantum meruit theory—that is, by multiplying the number of hours worked on the case by a reasonable hourly rate. However, a circuit court is not required to employ a quantum meruit approach. Vande Vput v. Pekin Insur. Co., 2005 WI App 56, 384 Wis. 2d 252, 917 N.W.2d 117, 13−0357.

In this case, the existence of an unfulfilled contingency did not prevent the circuit court from approving a settlement agreement. Sub. (1) (c) expressly states that the costs of collection shall be divided as directed by a court “unless otherwise agreed in writing by the parties.” In this case, the parties did not reach any agreement regarding the division of the costs of collection. On those facts, sub. (1) (c) gave the court clear authority to divide the costs of collection. Vande Vput v. Pekin Insur Co., 2018 WI App 36, 384 Wis. 2d 252, 917 N.W.2d 117, 13−0357.

Problems in 3rd−party action procedure under the Wisconsin worker’s compensation act. Piper. 60 MLR 91.

Impeding a negligent employer in a third−party action when the employer has provided worker’s compensation coverage for the employee’s injury from the malpractice was the loss of a legal right not a physical injury. Smith v. Zentgraf, 197 Wis. 2d 208, 506 N.W.2d 750 (Ct. App. 1995).

A “temporary help agency” requires: 1) an employer who places its employee with a 3rd−party employer. The 2nd employer controls the employee’s work activities. The 2nd employer compensates the first employer for the employee’s services. Place−mentment does not affect the employer’s work activity, but upon the employee to whom the employee’s work is being performed, net where the work is being performed. Controls some evidence of an employee or an employee to an employer, but upon the employee’s work activity is the matter of whose work the employee is performing, not where the work is being performed. Controls some evidence of an employee or an employee to an employer, but upon the employee’s work activity is the matter of whose work the employee is performing, not where the work is being performed. Controls some evidence of an employee or an employee to an employer, but upon the employee’s work activity is the matter of whose work the employee is performing, not where the work is being performed.

Any activities that the attorney takes to bring the claim to court on behalf of the party’s, if necessary to maintain an action in court. Those facts, sub. (1) (c) gave the court clear authority to compel an employee to accept settlement does not violate procedures prescribed by the respective statute.

The deduction for costs of collection under sub. (1) must be reasonable. The circuit court must determine whether a continuing factor is reasonable and look to the factors in SCR 20.15(a) that help determine the reasonableness of an attorney’s fee. For hourly attorney fees the court must follow the lodestar approach under which the circuit court must first multiply the reasonable number of hours expended by a reasonable rate then make adjustments using the SCR 20.15(a) factors. The sum of all the attorneys’ reasonable fees and costs may, but need not, exceed the amount of the worker’s compensation claim. Green v. Advance Finishing Technology, Inc. 2005 WI App 56, 384 Wis. 2d 252, 917 N.W.2d 117, 13−0357.
employer or the insurance company directly to the employee or the person entitled to compensation is subject to the conditions of the policy.

(6) The failure of the assured to do or refrain from doing any act required by the policy is not available to the insurance carrier as a defense against the claim of the injured employee or the injured employee’s dependents.

(7) (a) The department or the division may order direct reimbursement out of the proceeds payable under this chapter for payments made under a nonindustrial insurance policy covering the same disability and expenses compensable under s. 102.42 when the claimant consents or when it is established that the payments under the nonindustrial insurance policy were improper. No attorney fee is due with respect to that reimbursement.

(b) An insurer who issues a nonindustrial insurance policy described in par. (a) may not intervene as a party in any proceeding under this chapter for reimbursement under par. (a).


The prohibition of intervention by nonindustrial insurers under sub. (7) (b) is constitutional. An insurer is not denied a remedy for amounts wrongfully paid to its insured if it may bring a direct action against the insured.

Although sub. (7) (a), read in isolation, authorizes the reimbursement of a subrogated claim, the employer’s workman’s compensation insurance carrier is in liquidation, s. 646.31 (11) precludes the commissioner from ordering the employer to reimburse the subrogated insurer for those expenses. Wisconsin Insurance Security Fund v. Labor and Industry Review Commission, 2005 WI App 242, 288 Wis. 2d 206, 707 N.W.2d 293, 04–2137.

102.31 Worker’s compensation insurance; policy regulations. (1) (a) Every contract for the insurance of compensation provided under this chapter or against liability therefor is subject to this chapter and provisions inconsistent with this chapter are void.

(b) Except as provided in par. (c), a contract under par. (a) shall be construed to grant full coverage of all liability of the assured under this chapter unless the department specifically consents by written order to the issuance of a contract providing divided insurance or partial insurance.

(c) 1. Liability under s. 102.35 (3) is the sole liability of the employer, notwithstanding any agreement of the parties to the contrary.

2. An intermediate agency or publisher of a newspaper or magazine may, under its own contract of insurance, cover liability of persons selling or distributing the newspaper or magazine on the street or from house to house for an intermediate or independent news agency, if the contract of insurance of the publisher or intermediate agency is endorsed to cover those persons. If the publisher so covers, the intermediate or independent news agency need not cover liability for those persons.

(d) A contract procured to insure a partnership may not be construed to cover the individual liability of the members of the partnership in the course of a trade, business, profession or occupation conducted by them as individuals. A contract procured to insure an individual may not be construed to cover the liability of a partnership of which the individual is a member or to cover the liability of the individual arising as a member of any partnership.

(dL) A contract procured to insure a limited liability company may not be construed to cover the individual liability of the members of the limited liability company in the course of a trade, business, profession or occupation conducted by them as individuals. A contract procured to insure an individual may not be construed to cover the liability of a limited liability company of which the individual is a member or to cover the liability of the individual arising as a member of any limited liability company.

(e) An insurer who provides a contract under par. (a) shall file the contract as provided in s. 626.35.

(2) (a) No party to a contract of insurance may cancel the contract within the contract period or terminate or not renew the contract upon the expiration date until a notice in writing is given to the other party fixing the proposed date of cancellation or declaring that the party intends to terminate or does not intend to renew the policy upon expiration. Except as provided in par. (b), when an insurance company does not renew a policy upon expiration, the nonrenewal is not effective until 60 days after the insurance company has given written notice of the nonrenewal to the insured employer and the department. Cancellation or termination of a policy by an insurance company for any reason other than nonrenewal is not effective until 30 days after the insurance company has given written notice of the cancellation or termination to the insured employer and the department. Notice to the department may be given by personal service of the notice upon the department at its office in Madison or by sending the notice to the department in a medium approved by the department. The department may provide by rule that the notice of cancellation or termination be given to the Wisconsin compensation rating bureau rather than to the department in a medium approved by the department after consultation with the Wisconsin compensation rating bureau. Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination.

(b) 1. In the event of a court-ordered liquidation of an insurance company, a contract of insurance issued by that company terminates on the date specified in the court order.

2. Regardless of whether the notices required under par. (a) have been given, a cancellation or termination is effective upon the effective date of replacement insurance coverage obtained by the employer, the effective date of an election by an employer under s. 102.28 (2) (a) or the effective date of an election by an employer under s. 102.28 (2) (bm) to self-insure its liability for the payment of compensation under this chapter.

(3) The department may examine from time to time the books and records of any insurer issuing liability or compensation for an employer in this state. The department may require an insurer to designate one mailing address for use by the department and to respond to correspondence from the department within 30 days. Any insurer that refuses or fails to answer correspondence from the department or to allow the department to examine its books and records is subject to enforcement proceedings under s. 601.64.

(4) If any insurer authorized to transact worker’s compensation insurance in this state fails to promptly pay claims for compensation for which it is liable or fails to make reports to the department required by s. 102.38, the department may recommend to the commissioner of insurance, with detailed reasons, that enforcement proceedings under s. 601.64 be invoked. The commissioner shall furnish a copy of the recommendation to the insurer and shall set a date for a hearing, at which both the insurer and the department shall be afforded an opportunity to present evidence. If after the hearing the commissioner finds that the insurer has failed to carry out its obligations under this chapter, the commissioner shall institute enforcement proceedings under s. 601.64. If the commissioner does not so find, the commissioner shall dismiss the complaint.

(5) If any employer whom the department exempted from carrying compensation insurance arbitrarily or unreasonably refuses employment to or discharges employees because of a nondisabling physical condition, the department shall revoke the exemption of that employer.

(6) The department has standing to appear as a complainant in any administrative hearing or court proceeding instituted for alleged violation of s. 628.34 (7).

(7) If the department by one or more written orders specifically consents to the issuance of one or more contracts covering only the liability incurred on a construction project and if the construction project owner designates the insurance carrier and pays for each such contract, the construction project owner shall reimburse the department for all costs incurred by the department in issuing the written orders and in ensuring minimum confusion and maximum safety on the construction project. All moneys

2017–18 Wisconsin Statutes updated through 2019 Wis. Act 20 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on November 7, 2019. Published and certified under s. 35.18. Changes effective after November 7, 2019, are designated by NOTES. (Published 11–7–19)
received under this subsection shall be deposited in the worker’s compensation operations fund and credited to the appropriation account under s. 20.445 (1) (rb).

(8) The Wisconsin compensation rating bureau shall provide the department with any information that the department may request relating to worker’s compensation insurance coverage, including the names of employers insured and any insured employer’s address, business status, type and date of coverage, manual premium code, and policy information including numbers, cancellations, terminations, endorsements, and reinstatement dates. The department may enter into contracts with the Wisconsin compensation rating bureau to share the costs of data processing and other services. No information obtained by the department under this subsection may be made public by the department except as authorized by the Wisconsin compensation rating bureau.


Cross-reference: See also ss. DWD 80.61 and 80.65, Wis. adm. code.

Sub. (1) (b) now (1) (d) does not apply to a joint venture, and insurance written in the name of one venturer is sufficient to cover his or her joint liability. Insurance Company of North America v. DILLHR, 45 Wis. 2d 361, 175 N.W.2d 192 (1970).

102.315 Worker’s compensation insurance; employee leasing companies. (1) DEFINITIONS. In this section:

(a) “Bureau” means the Wisconsin compensation rating bureau under s. 626.06.

(b) “Client” means a person that obtains all or part of its non-temporary, ongoing employee workforce through an employee leasing agreement with an employee leasing company.

(c) “Divided workforce” means a workforce in which some of the employees of a client are leased employees and some of the employees of the client are not leased employees.

(d) “Divided workforce plan” means a plan under which 2 worker’s compensation insurance policies are issued to cover the employees of a client that has a divided workforce, one policy covering the leased employees of the client and one policy covering the employees of the client who are not leased employees.

(e) “Employee leasing agreement” means a written contract between an employee leasing company and a client under which the employee leasing company provides all or part of the nonpermanent, ongoing employee workforce of the client.

(f) “Employee leasing company” means a person that contracts to provide the nonpermanent, ongoing employee workforce of a client under a written agreement, regardless of whether the person uses the term “professional employer organization,” “PEO,” “staffing company,” “registered staff leasing company,” or “employee leasing company,” or uses any other, similar name, as part of the person’s business name or to describe the person’s business. “Employee leasing company” does not include a corporate educational service agency. This definition applies only for the purposes of this chapter and does not apply to the use of the term in any other chapter.

(g) “Leased employee” means a nonpermanent, ongoing employee whose services are obtained by a client under an employee leasing agreement.

(h) “Master policy” means a single worker’s compensation insurance policy issued by an insurer authorized to do business in this state to an employee leasing company in the name of the employee leasing company that covers more than one client of the employee leasing company.

(i) “Multiple coordinated policy” means a contract of insurance for worker’s compensation under which an insurer authorized to do business in this state issues separate worker’s compensation insurance policies to an employee leasing company for each client of the employee leasing company that is insured under the contract.

(j) “Small client” means a client that has an unmodified annual premium assignable to its business, including the business of all entities or organizations that are under common control or ownership with the client, that is equal to or less than the threshold below which employers are not experience rated under the standards and criteria under ss. 626.11 and 626.12, without regard to whether the client has a divided workforce.

(2) EMPLOYEE LEASING COMPANY LIABLE. An employee leasing company is liable under s. 102.03 for all compensation payable under this chapter to a leased employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, an employee leasing company may not seek or receive reimbursement from another employer for any payments made as a result of that liability. An employee leasing company is not liable under s. 102.03 for any compensation payable under this chapter to an employee of a client who is not a leased employee.

(3) MULTIPLE COORDINATED POLICY REQUIRED. Except as provided in subs. (4) and (5) (a), an employee leasing company shall insure its liability under sub. (2) by obtaining a separate worker’s compensation insurance policy for each of the client’s employee leasing company under a multiple coordinated policy. The policy shall name both the employee leasing company and the client as named insureds, shall indicate which named insured is the employee leasing company and which is the client, shall designate either the employee leasing company or the client, but not both, as the first named insured, and shall provide the mailing address of each named insured. Except as permitted under sub. (6), an insurer may issue a policy for a client under this subsection only if all of the employees of the client are leased employees and are covered under the policy.

(4) MASTER POLICY; APPROVAL REQUIRED. An employee leasing company may insure its liability under sub. (2) by obtaining a master policy that has been approved by the commissioner of insurance as provided in this subsection. The commissioner of insurance may approve the issuance of a master policy if the insurer proposing to issue the master policy submits a filing to the bureau showing that the insurer has the technological capacity and operation capability to provide to the bureau information, including unit statistical data, information concerning proof of coverage and cancellation, termination, and nonrenewal of coverage, and any other information that the bureau may require, at the client level and in a format required by the bureau and the bureau submits the filing to the commissioner of insurance for approval under s. 626.13. A master policy filing under this subsection shall also establish basic manual rules governing the issuance of such policies, the issuance of a master policy, and the insurer’s liability under s. 619.01 does not preclude the employee leasing company from obtaining a master policy under this paragraph so long as that client is not covered under the master policy. An insurer may issue a master policy under this paragraph insuring in the voluntary market the liability under sub. (2) of an employee leasing company with respect to a group of small clients of the employee leasing company regardless of whether any of those small clients has a divided workforce.

(5) MASTER POLICY; SMALL CLIENTS. (a) Regardless of whether a master policy has been approved under sub. (4), an employee leasing company may insure its liability under sub. (2) with respect to a group of small clients of the employee leasing company by obtaining a master policy in the voluntary market insuring that liability. The fact that an employee leasing company has a client that is covered under a mandatory risk–sharing plan under s. 619.01 does not preclude the employee leasing company from obtaining a master policy under this paragraph so long as that client is not covered under the master policy. An insurer may issue a master policy under this paragraph insuring in the voluntary market the liability under sub. (2) of an employee leasing company with respect to a group of small clients of the employee leasing company regardless of whether any of those small clients has a divided workforce.

(b) Within 30 days after the effective date of an employee leasing agreement with a small client that is covered under a master
policy under par. (a), the employee leasing company shall report to the department all of the following information:

1. The name and address of the small client and of each entity or organization that is under common control or ownership with the small client.
2. The number of employees initially covered under the master policy.
3. The estimated unmodified annual premium assignable to the small client’s business, including the business of all entities or organizations that are under common control or ownership with the small client, without regard to whether the small client has a divided workforce, which information the small client shall report to the employee leasing company.
4. The effective date of the employee leasing agreement.

(c) Within 30 days after the effective date of coverage of a small client under a master policy under par. (a), the insurer or, if authorized by the insurer, the employee leasing company shall file proof of that coverage with the department. Coverage of a small client under a master policy becomes binding when the insurer or employee leasing company files proof of that coverage under this paragraph or provides notice of coverage to the small client, whichever occurs first. Nothing in this paragraph requires an employee leasing company to be licensed as an insurance intermediary under ch. 628.

(d) If at any time the unmodified annual premium assignable to the business of a small client that is covered under a master policy under par. (a), including the business of all entities or organizations that are under common control or ownership with the small client, without regard to whether the small client has a divided workforce, exceeds the threshold below which employers are not experience rated under the standards and criteria under ss. 626.11 and 626.12, the employee leasing company shall notify the insurer and obtain coverage for the small client under sub. (3) or (4).

(6) DIVIDED WORKFORCE. (a) If a client notifies the department as provided under par. (b) of its intent to have a divided workforce, an insurer may issue a worker’s compensation insurance policy covering only the leased employees of the client. An insurer that issues a policy covering only the leased employees of a client is not liable under s. 102.03 for any compensation payable under this chapter to an employee of the client who is not a leased employee unless the insurer also issues a policy covering that employee. A client that has a divided workforce shall insure its employees who are not leased employees in the voluntary market and may not insure those employees under the mandatory risk-sharing plan under s. 619.01 unless the leased employees of the client are covered under that plan.

(b) A client that intends to have a divided workforce shall notify the department of that intent on a form prescribed by the department that includes all of the following:

1. The names and mailing addresses of the client and the employee leasing company, the effective date of the employee leasing agreement, a description of the employees of the client who are not leased employees, and such other information as the department may require.
2. Except as provided in par. (c), evidence that the employees of the client who are not leased employees are covered in the voluntary market. That evidence shall be in the form of a copy of the information page or declaration page of a worker’s compensation insurance policy or binder evidencing placement of coverage in the voluntary market covering those employees.
3. An agreement by the client to assume full responsibility to immediately pay all compensation and other payments payable under this chapter as may be required by the department should a dispute arise between 2 or more insurers as to liability under this chapter for an injury sustained while a divided workforce plan is in effect, pending final resolution of that dispute. This subdivision does not preclude a client from insuring that responsibility in an insurer authorized to do business in this state.

(c) If the leased employees of a client are covered under a mandatory risk-sharing plan under s. 619.01, the client may, instead of providing the evidence required under par. (b) 2., provide evidence in its notification under par. (b) that both the leased employees of the client and the employees of the client who are not leased employees are covered under that mandatory risk-sharing plan. That evidence shall be in the form of a copy of the information page or declaration page of a worker’s compensation insurance policy or binder evidencing placement of coverage under the mandatory risk-sharing plan covering both those leased employees and employees who are not leased employees.

(d) When the department receives a notification under par. (b), the department shall immediately provide a copy of the notification to the bureau.

(e) 1. If a client intends to terminate a divided workforce plan, the client shall notify the department of that intent on a form prescribed by the department. Termination of a divided workforce plan by a client is not effective until 10 days after notice of the termination is received by the department.

2. If an insurer cancels, terminates, or does not renew a worker’s compensation insurance policy issued under a divided workforce plan that covers in the voluntary market the employees of a client who are not leased employees, the divided workforce plan is terminated on the effective date of the cancellation, termination, or nonrenewal of the policy, unless the client submits evidence under par. (c) that both the leased employees of the client and the employees of the client who are not leased employees are covered under a mandatory risk-sharing plan.

3. If an insurer cancels, terminates, or does not renew a worker’s compensation insurance policy issued under a divided workforce plan that covers under the mandatory risk-sharing plan under s. 619.01 the employees of a client who are not leased employees, the divided workforce plan is terminated on the effective date of the cancellation, termination, or nonrenewal of the policy.

(7) FILING OF CONTRACTS. An insurer that provides a policy under sub. (3), (4), or (5) (a) shall file the policy as provided in s. 626.35.

(8) COVERAGE OF CERTAIN EMPLOYEES. (a) A sole proprietor, a partner, or a member of a limited liability company is not eligible for worker’s compensation benefits under a policy issued under sub. (3), (4), or (5) (a) unless the sole proprietor, partner, or member elects coverage under s. 102.075 by an endorsement on the policy naming the sole proprietor, partner, or member who has so elected.

(b) An officer of a corporation is covered for worker’s compensation benefits under a policy issued under sub. (3), (4), or (5) (a), unless the officer elects under s. 102.076 not to be covered under the policy by an endorsement on the policy naming the officer who has so elected.

(c) An employee leasing company shall obtain a worker’s compensation insurance policy that is separate from a policy covering the employees whom it leases to its clients to cover the employees of the employee leasing company who are not leased employees.

(9) PREMIUMS. (a) An insurer that issues a policy under sub. (3), (4), or (5) (a) may charge a premium for coverage under that policy that complies with the applicable classifications, rules, rates, and rating plans filed with and approved by the commissioner of insurance under s. 626.13.

(b) For a policy issued under sub. (3) in which an employee leasing company is the first named insured or for a master policy issued under sub. (4) or (5) (a), an insurer may obligate only the employee leasing company to pay premiums due for a client’s coverage under the policy and may not recover any unpaid premiums due for that coverage from the client.
(c) This subsection does not prohibit an insurer from doing any of the following:

1. Collecting premiums or other charges due with respect to a client by means of list billing through an employee leasing company.

2. Requiring an employee leasing company to maintain a letter of credit or other form of security to ensure payment of a premium.

3. Issuing policies that have a common renewal date to all, or a class of all, clients of an employee leasing company.

4. Grouping together the clients of an employee leasing company for the purpose of offering dividend eligibility and paying dividends to those clients in compliance with s. 631.51.

5. Applying a discount to the premium charged with respect to a client as permitted by the bureau.

6. Applying a retrospective rating option for determining the premium charged with respect to a client. No insurer or employee leasing company may impose on, allocate to, or collect from a client a penalty under a retrospective rating option arrangement. This subdivision does not prohibit an insurer from requiring an employee leasing company to pay a penalty under a retrospective rating option arrangement with respect to a client of the employee leasing company.

(10) CANCELLATION, TERMINATION, AND NONRENEWAL OF POLICIES. (a) 1. A policy issued under sub. (3) in which the employee leasing company is the first named insured and a policy issued under sub. (4) or (5) (a) may be cancelled, terminated, or nonrenewed as provided in subds. 2 to 4.

2. The insureds under a policy described in subd. 1. may cancel the policy during the policy period if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client or by the client agreeing to the cancellation in writing, and the insurer provides written notice of the cancellation to the department as required under s. 102.31 (2) (a).

3. Subject to subd. 4., an insurer may cancel, terminate, or nonrenew a policy described in subd. 1. by providing written notice of the cancellation, termination, or nonrenewal to the insured employee leasing company and to the department as required under s. 102.31 (2) (a) and by providing that notice to the insured client. The insurer is not required to state in the notice to the insured client the facts on which the decision to cancel, terminate, or nonrenew the policy is based. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision for any reason other than nonrenewal is not effective until 30 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department. Except as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not effective until 60 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department.

4. If an employee leasing agreement is terminated during the policy period of a policy described in subd. 1., an insurer shall cancel the employee leasing company’s coverage under the policy by an endorsement to the policy and coverage of the client under the policy shall continue as to all employees of the client unless the policy is cancelled or terminated as permitted under subd. 3.


102.32 Continuing liability; guarantee settlement, gross payment. (1m) In any case in which compensation payments for an injury have extended or will extend over 6 months or more after the date of the injury or in any case in which death benefits are payable, any party in interest may, in the discretion of the department or the division, be discharged from, or compelled to guarantee, future compensation payments by doing any of the following:

(a) Depositing the present value of the total unpaid compensation upon a 5 percent interest discount basis with a credit union, savings bank, savings and loan association, bank, or trust company designated by the department or the division.

(b) Purchasing an annuity, within the limitations provided by law, from an insurance company licensed in this state that is designated by the department.

(c) Making payment in gross upon a 5 percent interest discount basis to be approved by the department or the division.

(d) In cases in which the time for making payments or the amounts of payments cannot be definitely determined, furnishing a bond, or other security, satisfactory to the department or the division for the payment of compensation as may be due or become due. The acceptance of the bond, or other security, and the form and sufficiency of the bond or other security, shall be subject to the approval of the department or the division. If the employer or insurer is unable or fails to immediately procure the bond, the employer or insurer, in lieu of procuring the bond, shall deposit with a credit union, savings bank, savings and loan association, bank, or trust company designated by the department or the division the maximum amount that may reasonably become payable in those cases, to be determined by the department or the division at amounts consistent with the extent of the injuries and the law. The bonds and deposits may be reduced only to satisfy claims and
may be withdrawn only after the claims which they are to guarantee are fully satisfied or liquidated under par. (a), (b), or (c).

(5) Any insured employer may, in the discretion of the department or the division, compel the insurer to discharge, or to guarantee payment of, the employer’s liabilities in any case described in sub. (1m) and by that discharge or guarantee release the employer from liability for compensation in that case, except that if for any reason a bond furnished or deposit made under sub. (1m) (d) does not fully protect the beneficiary of the bond or deposit, the compensation insurer or insured employer, as the case may be, shall still be liable to that beneficiary.

(6) (a) If compensation is due for permanent disability following an injury or death benefits payable, payments shall be made to the employee or dependent on a monthly basis as provided in pars. (b) to (e).

(b) Subject to par. (d), if the employer or the employer’s insurer concedes liability for an injury that results in permanent disability and if the extent of the permanent disability can be determined based on a minimum permanent disability rating promulgated by the department by rule, compensation for permanent disability shall begin within 30 days after the end of the employee’s healing period or the date on which compensation for temporary disability ends due to the employee’s return to work, whichever is earlier.

c) Subject to par. (d), if the employer or the employer’s insurer concedes liability for an injury that results in permanent disability, but the extent of the permanent disability cannot be determined without a medical report that provides the basis for a minimum permanent disability rating, compensation for permanent disability shall begin within 30 days after the employer or the employer’s insurer receives a medical report that provides a basis for a permanent disability rating.

d) The department shall promulgate rules for determining when compensation for permanent disability shall begin in cases in which the employer or the employer’s insurer concedes liability, but disputes the extent of permanent disability.

e) Payments for permanent disability, including payments based on minimum permanent disability ratings promulgated by the department by rule, shall continue on a monthly basis and shall accrue and be payable between intermittent periods of temporary disability so long as the employer or insurer knows the nature of the permanent disability.

(6m) The department or the division may direct an advance on a payment of unaccrued compensation for permanent disability or death benefits if the department or the division determines that the advance payment is in the best interest of the injured employee or the employee’s dependents. In directing the advance, the department or the division shall give the employer or the employer’s insurer an interest credit against its liability. The credit shall be computed at 5 percent. An injured employee or dependent may receive no more than 3 advance payments per calendar year.

(7) No lump sum settlement shall be allowed in any case of permanent total disability upon an estimated life expectancy, except upon consent of all parties, after hearing and finding by the department that the interests of the injured employee will be served by the lump sum settlement.

Cross-reference: See also ss. DWD 80.32, 80.33, 80.39, and 80.50, Wis. adm. code.

The interest credit under sub. (6) [now sub. (6m)] was properly calculated on a per annum basis rather than a one−time simple interest basis. Henn v. LIRC, 223 Wis. 2d 183, 588 N.W.2d 358 (Ct. App. 1998), 98−0051.

102.33 Forms and records; public access. (1) The department and the division shall print and furnish free to any employer or employee any blank forms that are necessary to facilitate efficient administration of this chapter. The department and the division shall keep any record books or records that are necessary for the proper and efficient administration of this chapter.

(2) (a) Except as provided in pars. (b) and (c), the records of the department, the division, and the commission, related to the administration of this chapter are subject to inspection and copying under s. 19.35 (1).

(b) Except as provided in this paragraph and par. (d), a record maintained by the department, the division, or the commission that reveals the identity of an employee who claims worker’s compensation benefits, the nature of the employee’s claimed injury, the employee’s past or present medical condition, the extent of the employee’s disability, or the amount, type, or duration of benefits paid to the employee and a record maintained by the department that reveals any financial information provided to the department by a self−insured employer or by an applicant for exemption under s. 102.28 (2) (b) are confidential and not open to public inspection or copying under s. 19.35 (1) unless one of the following applies:

1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee.

Agor authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the department, the division, or the commission.

2. The record that is requested contains confidential information concerning a worker’s compensation claim and the requester is an insurance carrier or employer that is a party to any worker’s compensation claim involving the same employee or an attorney or authorized agent of that insurance carrier or employer.

An attorney or authorized agent of an insurance carrier or employer that is a party to an employee’s worker’s compensation claim shall provide a written authorization for inspection and copying from the insurance carrier or employer if requested by the department, the division, or the commission.

3. The record that is requested contains financial information provided by a self−insured employer or by an applicant for exemption under s. 102.28 (2) (b) and the requester is the self−insured employer or applicant for exemption or an attorney or authorized agent of the self−insured employer or applicant for exemption. An attorney or authorized agent of the self−insured employer or of the applicant for exemption shall provide a written authorization for inspection and copying from the self−insured employer or applicant for exemption if requested by the department.

4. A court of competent jurisdiction in this state orders the department, the division, or the commission to release the record.

5. The requester is the department of children and families or a county child support agency under s. 59.53 (5), the request is made under s. 49.22 (2m), and the request is limited to the name and address of the employee who is the subject of the record, the name and address of the employee’s employer, and any financial information about that employee obtained in the record.

6. The department of revenue requests the record for the purpose of locating a person, or the assets of a person, who has failed to file tax returns, who has underreported taxable income or who is a delinquent taxpayer; identifying fraudulent tax returns; or providing information for tax−related prosecutions.

(c) A record maintained by the department, the division, or the commission that contains employer or insurer information obtained from the Wisconsin compensation rating bureau under s. 102.31 (5) or 626.32 (1) (a) is confidential and not open to public inspection or copying under s. 19.35 (1) unless the Wisconsin compensation rating bureau authorizes public inspection or copying of that information.

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(d) 1. In this paragraph:
   a. “Government unit” has the meaning given in s. 108.02 (17) and also includes a corresponding unit in the government of another state or a unit of the federal government.
   b. “Institution of higher education” has the meaning given in s. 108.02 (18).
   c. “Nonprofit research organization” means an organization that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code and whose mission is to engage in research.

2. The department, the division, or the commission may release information that is confidential under par. (b) to a government unit, an institution of higher education, or a nonprofit research organization for purposes of research and may release information that is confidential under par. (c) to those persons for that purpose if the Wisconsin compensation rating bureau authorizes that release. A government unit, institution of higher education, or nonprofit research organization may not permit inspection or disclosure of any information released to it under this subdivision that is confidential under par. (b) unless the department, the division, or the commission authorizes that inspection or disclosure and may not permit inspection or disclosure of any information released to it under this subdivision that is confidential under par. (c) unless the department, the division, or the commission, and the Wisconsin compensation rating bureau, authorizes that inspection or disclosure. A government unit, institution of higher education, or nonprofit research organization that obtains any confidential information under this subdivision for purposes of research shall provide the results of that research free of charge to the person that released or authorized the release of that information.


102.35 Penalties. (1) Every employer and every insurance company that fails to keep the records or to make the reports required by this chapter or that knowingly falsifies such records or makes false reports shall pay a work injury supplemental benefit surcharge to the state of not less than $10 nor more than $100 for each offense. The department may waive or reduce a surcharge imposed under this subsection if the employer or insurance company that violated this subsection requests a waiver or reduction of the surcharge within 45 days after the date on which notice of the surcharge is mailed to the employer or insurance company and shows that the violation was due to mistake or an absence of information. A surcharge imposed under this subsection is due within 30 days after the date on which notice of the surcharge is mailed to the employer or insurance company. Interest shall accrue on amounts that are not paid when due at the rate of 1 percent per month. All surcharges and interest payments received under this subsection shall be deposited in the fund established under s. 102.65.

(2) Any employer, or duly authorized agent thereof, who, without reasonable cause, refuses to rehire an employee injured in the course of employment, or who, because of a claim or attempt to claim compensation benefits from such employer, discriminates or threatens to discriminate against an employee as to the employee’s employment, shall forfeit to the state not less than $50 nor more than $500 for each offense. No action under this subsection may be commenced except upon request of the department.

(3) Any employer who, without reasonable cause, refuses to rehire an employee who is injured in the course of employment, when suitable employment is available within the employee’s physical and mental limitations, upon order of the department or the division, has exclusive liability to pay to the employee, in addition to other benefits, the wages lost during the period of such refusal, not exceeding one year’s wages. In determining the availability of suitable employment the continuance in business of the employer shall be considered and any written rules promulgated by the employer with respect to seniority or the provisions of any collective bargaining agreement with respect to seniority shall govern.


102.37 Employers’ records. Every employer of 3 or more persons and every employer who is subject to this chapter shall keep a record of all accidents causing death or disability of any employee while performing services growing out of and incident to the employment. This record shall give the name, address, age, and wages of the deceased or injured employee, the time and cause of the accident, the nature and extent of the injury, and any other information the department may require by rule or general order. Reports based upon this record shall be furnished to the department at such times and in such manner as the department may require by rule or general order, in a format approved by the department.

History: 1975 c. 147 s. 54; 1985 a. 83; 2001 a. 37.

102.38 Records and reports of payments. Every insurance company that transacts the business of compensation insurance, and every employer who is subject to this chapter, but whose liability is not insured, shall keep a record of all payments made under this chapter and of the time and manner of making the payments and shall furnish reports based upon these records and any other information to the department as the department may require by rule or general order, in a format approved by the department.

History: 1975 c. 147 s. 54; 1979 c. 199; 1997 c. 89; 1985 a. 83; 2001 a. 37.

102.39 Rules and general orders; application of statutes. The provisions of s. 103.005 relating to the adoption, publication, modification, and court review of rules or general orders of the department shall apply to all rules promulgated or general orders adopted under this chapter.

History: 1995 a. 27; 2001 a. 37.

102.40 Reports not evidence in actions. Reports furnished to the department pursuant to ss. 102.37 and 102.38 shall not be admissible as evidence in any action or proceeding arising out of the death or accident reported.

102.42 Incidental compensation. (1) TREATMENT OF EMPLOYEE. The employer shall supply such medical, surgical, chi-

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ropractic, psychological, podiatric, dental, and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employee, Christian Science treatment in lieu of medical treatment, medicines, and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such treatment, medicines, supplies, and training. When the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies, and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employee or to maintain the existing status of such condition whether or not healing is completed.

(1m) LIABILITY FOR UNNECESSARY TREATMENT. If an employee who has sustained a compensable injury undertakes in good faith an invasive treatment that is generally medically acceptable, but that is unnecessary, the employer shall pay disability indemnity for all disability incurred as a result of that treatment. An employer is not liable for disability indemnity for any disability incurred as a result of any treatment undertaken in good faith that is noninvasive or not medically acceptable. This subsection applies to all findings that an employee has sustained a compensable injury, whether the finding results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department or the division.

(2) CHOICE OF PRACTITIONER. (a) When the employer has notice of an injury and its relationship to the employment, the employer shall offer to the injured employee his or her choice of any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist licensed to practice and practicing in this state for treatment of the injury. By mutual agreement, the employer may, at the employee's choice of any qualified practitioner not licensed in this state. In case of emergency, the employer may arrange for treatment without tendering a choice. After the emergency has passed the employer shall be given his or her choice of attending practitioner at the earliest opportunity. The employee has the right to a 2nd choice of attending practitioner on notice to the employer or its insurance carrier. Any further choice shall be by mutual agreement. Partners and clinics are considered to be one practitioner. Treatment by a practitioner on referral from another practitioner is considered to be treatment by one practitioner.

(b) The employer is liable for the expense of reasonable travel to obtain treatment at the same rate as is provided for state officers and employees under s. 20.916 (8). The employer is not liable for the expense of unreasonable travel to obtain treatment.

(3) PRACTITIONER CHOICE UNRESTRICTED. If the employer fails to tender treatment as provided in sub. (1) or choice of an attending practitioner as provided in sub. (2), the employee's right to choose the attending practitioner is not restricted and the employer is liable for the reasonable and necessary expense thereof.

(4) CHRISTIAN SCIENCE. The liability of an employer for the cost of Christian Science treatment provided to an injured employee is limited to the usual and customary charge for that treatment.

(5) ARTIFICIAL MEMBERS. Liability for repair and replacement of prosthetic devices is limited to the effects of normal wear and tear. Artificial members furnished at the end of the healing period for cosmetic purposes only need not be duplicated.

(6) TREATMENT REJECTED BY EMPLOYEE. Unless the employee has elected Christian Science treatment in lieu of medical, surgical, dental, or hospital treatment, no compensation shall be payable for the death or disability of an employee, if the death is caused, or insofar as the disability may be aggravated, caused, or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical, surgical, or dental treatment or, in the case of tuberculosis, by refusal or neglect to submit to or follow hospital or medical treatment when found by the department or the division to be necessary. The right to compensation accruing during the period of refusal or neglect to submit to or follow hospital or medical treatment when found by the department or the division to be necessary in the case of tuberculosis shall be barred, irrespective of whether disability was aggravated, caused, or continued by that refusal or neglect.

(8) AWARD TO STATE EMPLOYEE. Whenever the department or the division makes an award on behalf of a state employee, the department or the division shall file duplicate copies of the award with the subunit of the department of administration responsible for risk management. Upon receipt of the copies of the award, the department of administration shall promptly issue a voucher in payment of the award from the proper appropriation under s. 20.865 (1m) (fm), (kr) or (ur), and shall transmit one copy of the voucher and the award to the officer, department, or agency by whom the affected employee is employed.

(9) REHABILITATION; PHYSICAL AND VOCATIONAL. (a) One of the primary purposes of this chapter is restoration of an injured employee to gainful employment. To this end, the department shall employ a specialist in physical, medical, and vocational rehabilitation.

(b) Such specialist shall study the problems of rehabilitation, both physical and vocational and shall refer suitable cases to the department for vocational evaluation and training. The specialist shall investigate and maintain a directory of such rehabilitation facilities, private and public, as are capable of rendering competent rehabilitation service to seriously injured employees.

(c) The specialist shall review and evaluate reported injuries for potential cases in which seriously injured employees may be in need of physical and medical rehabilitation and may confer with the injured employee, employer, insurance carrier or attending practitioner regarding treatment and rehabilitation.

History: 1971 c. 61; 1973 c. 150, 282; 1975 c. 147; 1977 c. 195 s. 24 to 28, 45, 1981 c. 207 s. 1 as 1985 a. 556; 1989 a. 358, 94−2794 s. 3744; 1995 a. 27 s. 19; 1999 a. 9 s. 38, 3744, 9130 (4) (2017−18 Wis. Stats. updated through 2019 Wis. Act 20 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on November 7, 2019. Published and certified under s. 35.18. Changes effective after November 7, 2019, are designated by NOTES. (Published 11−7 1999).
medical expenses after that time. Schenkski v. LIRC, 203 Wis. 2d 109, 552 N.W.2d 120 (Ct. App. 1996), 96–9015.

Under sub. (2), an employer can seek reimbursement for expenses related to 2 practices of: whether they are the first 2 practitioners whom the employee has seen. Hernandez Carpio Martis v. LIRC, 220 Wis. 2d 611, 583 N.W.2d 662 (Ct. App. 1998), 97–1119.

Section 102.01 (2) (e) sets the date of injury of an occupational disease and s. 102.01 (1) provides that medical expenses incurred before an employer knows of the work–related injury are compensable. Read together, medical expenses in occupational disease cases are not compensable until the date of injury, but once the date is established all expenses associated with the disease, even if incurred before the date of injury, are compensable. United Wisconsin Insurance Co. v. LIRC, 229 Wis. 2d 416, 600 N.W.2d 186 (Ct. App. 1999), 97–3776.

Spencer creates an exception to the general rule that compensation is permitted only if medical expenses are reasonably required and necessary. As long as a claimant engages in unnecessary and unreasonable treatment in good faith, the employer is responsible for payment. Homuthans Restaurants, Inc. v. LIRC, 2000 WI App 273, 240 Wis. 2d 254, 621 N.W.2d 660, 99–3002.

An employee is not eligible for benefits under sub. (1m) if the disability–causing treatment was directed at treating something other than the employee’s compensable injury. Because the claimant’s surgery treated her preexisting condition, not her compensable injury, her claim was disallowed. Flug v. LIRC, 2017 WI 72, 376 Wis. 2d 571, 898 N.W.2d 91, 15–1989.


102.425 Prescription and nonprescription drug treatment. (1) DEFINITIONS. In this section:

(a) “Dispense” has the meaning given in s. 450.01 (7).
(b) “Drug” has the meaning given in s. 450.01 (10).
(c) “Drug product equivalent” has the meaning given in s. 450.13 (1e).
(cm) “Licensed pharmacy” means a pharmacy licensed under s. 450.06 or 450.065.
(d) “Nonprescription drug product” has the meaning given in s. 450.01 (13m).
(e) “Pharmacist” has the meaning given in s. 450.01 (15).
(f) “Practitioner” has the meaning given in s. 450.01 (17).
(g) “Prescription” has the meaning given in s. 450.01 (19).
(h) “Prescription drug” has the meaning given in s. 450.01 (20).
(i) “Prescription order” has the meaning given in s. 450.01 (21).

(2) SUBSTITUTION OF DRUG PRODUCT EQUIVALENTS. (a) Except as provided in pars. (b) and (c), when a drug is prescribed to treat an injury for which an employer or insurer is liable under this chapter, the pharmacist or practitioner dispensing the drug shall substitute a drug product equivalent in place of the prescribed drug if all of the following apply:
1. In the professional judgment of the dispensing pharmacist or practitioner, the drug product equivalent is therapeutically equivalent to the prescribed drug.
2. The charge for the drug product equivalent is less than the charge for the prescribed drug.
(b) A pharmacist or practitioner may not substitute a drug product equivalent under par. (a) in place of a prescribed drug if any of the following apply:
1. The prescribed drug is a single–source patented drug for which there is no drug product equivalent.
2. The prescriber determines that the prescribed drug is medically necessary and indicates that no substitution may be made for that prescribed drug by writing on the face of the prescription drug or, in the case of a prescription order that is transmitted electronically, by designating in electronic format the phrase “No substitutions” or “Dispense as written” or words of similar meaning or the initials “N.S.” or “D.A.W.”
(c) Unless par. (b) applies, if an injured employee requests that a specific brand name drug be used to treat the employee’s injury, the pharmacist or practitioner dispensing the prescription shall dispense the specific brand name drug as requested. If a specific brand name drug is dispensed under this paragraph, the employer or insurer and the employee shall share the cost of the prescription as follows:
1. The employer or insurer shall be liable in an amount equal to the average wholesale price, as determined under sub. (3) (a) 1., of the lowest–priced drug product equivalent that the pharmacist or practitioner has in stock on the day on which the brand name drug is dispensed, plus the dispensing fee under sub. (3) (a) 2. and any applicable taxes under sub. (3) (a) 3. that would be payable for that drug product equivalent.
2. The employer shall be liable in an amount equal to the difference between the amount for which the employer or insurer is liable under sub. 1. and an amount equal to the average wholesale price, as determined under sub. (3) (a) 1., of the brand name drug on the day on which the brand name drug is dispensed, plus any applicable taxes under sub. (3) (a) 3. that are payable for that brand name drug.

(3) LIABILITY OF EMPLOYER OR INSURER. (a) The liability of an employer or insurer for the cost of a prescription drug dispensed under sub. (2) for outpatient use by an injured employee, including a prescription drug dispensed outside of a licensed pharmacy, is limited to the sum of all of the following:
1. The average wholesale price of the prescription drug as of the date on which the prescription drug is dispensed, as quoted in the Drug Topics Red Book, published by Medical Economics Company, Inc., or its successor, or, if that book is discontinued and becomes unavailable, as quoted in another nationally recognized pricing source determined by the department.
2. A dispensing fee of $3 per prescription order, which shall be payable for all prescription drugs dispensed under sub. (2) regardless of the location from which the prescription drug is dispensed, but which shall be payable only to a pharmacist who dispenses the prescription drug.
3. Any state or federal taxes that may be applicable to the prescription drug dispensed.
(b) In addition to the liability under par. (a), an employer or insurer is also liable for reimbursement to an injured employee for all out–of–pocket expenses incurred by the injured employee in obtaining the prescription drug dispensed.
(c) A billing statement submitted to an employer or insurer for a prescription drug dispensed under sub. (2) shall include the national drug code number of the prescription as listed in the national drug code directory maintained by the federal food and drug administration and shall state separately the price of the prescription drug and the dispensing fee.

(4) LIABILITY OF EMPLOYEE. (a) Except as provided in par. (b), a pharmacist or practitioner who dispenses a prescription drug under sub. (2) to an injured employee may not collect, or bring an action to collect, from the injured employee any charge that is in excess of the liability of the injured employee under sub. (2) (c) 2. or the liability of the employer or insurer under sub. (3) (a).
(b) If an employer or insurer denies or disputes liability for the cost of a drug prescribed to an injured employee under sub. (2), the pharmacist or practitioner who dispensed the drug may collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed, subject to the limitations specified in sub. (3) (a). If an employer or insurer concedes liability for the cost of a drug prescribed to an injured employee under sub. (2), but disputes the reasonableness of the amount charged for the prescription drug dispensed, the employee or insurer shall provide notice under sub. (4m) (b) to the pharmacist or practitioner that the reasonableness of the amount charged is in dispute and the pharmacist or practitioner who dispensed the drug may not collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed after receiving that notice.

1. The department has jurisdiction under this subsection, the department and the division have jurisdiction under s. 102.16 (1m) (c), and the division has jurisdiction under s. 102.17 to resolve a dispute between a pharmacist or practitioner and an employer or insurer over the reasonableness of the amount

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charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee who claims benefits under this chapter.

(b) An employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee or the department or division under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 3. shall provide, within 30 days after receiving a completed bill for the prescription drug, reasonable written notice to the pharmacist or practitioner that the charge is being disputed. After receiving reasonable written notice under this paragraph or under sub. (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 3. that a prescription drug charge is being disputed, a pharmacist or practitioner may not collect the disputed charge from, or bring an action for collection of the disputed charge against, the employee who received the prescription drug.

(c) A pharmacist or practitioner that receives notice under par. (b) that the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee is in dispute shall file the dispute with the department within 6 months after receiving that notice.

(d) The department shall deny payment of a prescription drug charge that the department determines under this subsection to be unreasonable. A pharmacist or practitioner and an employer or insurer that are parties to a dispute under this subsection over the reasonableness of a prescription drug charge are bound by the department’s determination under this subsection on the reasonableness of the disputed charge, unless that determination is set aside on judicial review as provided in par. (e).

(e) Within 30 days after a determination under this subsection, the department may set aside, reverse, or modify the determination for any reason that the department considers sufficient.

5. NONPRESCRIPTION DRUG PRODUCTS. The liability of an employer or insurer for the cost of a nonprescription drug product used to treat an injured employee is limited to the usual and customary charge to the general public for the nonprescription drug product.

History:

102.43 Weekly compensation schedule. If the injury causes disability, an indemnity shall be due as wages commencing the 4th calendar day from the commencement of the day the scheduled work shift began, exclusive of Sundays only, excepting where the employee works on Sunday, after the injury occurred shall be payable weekly thereafter, during such disability. If the disability exists after 7 calendar days from the date the employee works as a result of the injury and shall be payable weekly thereafter, during such disability. If the disability exists after 7 calendar days from the date the employee works after the injury occurred shall be payable weekly thereafter, during such disability. If the disability exists after 7 calendar days from the date the employee works as a result of the injury and if it so exists, indemnity shall also be due and payable for the first 3 calendar days, exclusive of Sundays only, excepting where the employee works on Sunday. Said weekly indemnity shall be as follows:

(1) If the injury causes total disability, two-thirds of the average weekly earnings during such disability.

(2) If the injury causes partial disability, during the partial disability, such proportion of the weekly indemnity rate for total disability as the actual wage loss of the injured employee bears to the injured employee’s average weekly wage at the time of the injury.

(3) If the disability caused by the injury is at times total and at times partial, the weekly indemnity during each total or partial disability shall be in accordance with subs. (1) and (2), respectively.

(4) If the disability period involves a fractional week, indemnity shall be paid for each day of such week, except Sundays only, at the rate of one-sixth of the weekly indemnity.

(5) Temporary disability, during which compensation shall be payable for loss of earnings, shall include such period as may be reasonably required for training in the use of artificial members and appliances.

(b) Except as provided in s. 102.61 (1g), temporary disability shall also include such period as the employee may be receiving instruction under s. 102.61 (1) or (1m). Temporary disability on account of receiving instruction under s. 102.61 (1) or (1m), and not otherwise resulting from the injury, shall not be in excess of 80 weeks. That 80-week limitation does not apply to temporary disability benefits under this section, the cost of tuition, fees, books, travel, or maintenance under s. 102.61 (1), or the cost of private rehabilitation counseling or rehabilitative training under s. 102.61 (1m) if the department or the division determines that additional training is warranted. The necessity for additional training as authorized by the department or the division for any employee shall be subject to periodic review and reevaluation.

(c) Compensation for temporary disability on account of receiving instruction under s. 102.61 (1) or (1m) shall not be reduced under sub. (2) on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is receiving that instruction. If an employee works more than 24 hours of work during a week in which the employee is receiving that instruction, all wages earned for hours worked in excess of 24 during that week shall be offset against the employee’s average weekly wage in calculating compensation for temporary disability under sub. (2). An employee who is receiving compensation for temporary disability on account of receiving instruction under s. 102.61 (1) or (1m) shall report any wages earned during the period in which the employee is receiving that instruction to the insurance carrier or self-insured employer paying that compensation.

6. (a) Except as provided in par. (b), no sick leave benefits provided in connection with other employment or wages received from other employment held by the employee when the injury occurred may be considered in computing actual wage loss from the employer in whose employ the employee sustained injury.

(b) In the case of an employee whose average weekly earnings are calculated under s. 102.11 (1) (a), wages received from other employment held by the employee when the injury occurred shall be considered in computing actual wage loss from the employer in whose employ the employee sustained injury.

(c) Wages received from the employer in whose employ the employee sustained injury or from other employment obtained after the injury occurred shall be considered in computing benefits for temporary disability.

(7) (a) If an employee has a renewed period of temporary disability commencing more than 2 years after the date of injury and, except as provided in par. (b), the employee returned to work for at least 10 days preceding the renewed period of disability, payment of compensation for the new period of disability shall be made as provided in par. (c).

(b) An employer need not return to work at least 10 days preceding a renewed period of temporary disability to obtain benefits under sub. (5) (b) for rehabilitative training commenced more than 2 years after the date of injury. Benefits for rehabilitative training shall be made as provided in par. (c).

(c) 1. If the employee was entitled to maximum weekly benefits at the time of injury, payment for the renewed temporary disability or the rehabilitative training shall be at the maximum rate in effect at the commencement of the new period.

2. If the employee was entitled to less than the maximum rate, the employee shall receive the same proportion of the maximum
which is in effect at the time of the commencement of the renewed period or the rehabilitative training as the employee’s actual rate at the time of injury bore to the maximum rate in effect at that time.

3. For an employee who is receiving rehabilitative training, a holiday break, semester break or other, similar scheduled interruption in a course of instruction does not commence a new period of rehabilitative training under this paragraph.

4. Regardless of whether the employee’s healing period has ended, no employee at work immediately before the compulsory vacation period may receive a temporary total disability benefit for injury sustained while engaged in employment for that employer.

5. An employee receiving temporary partial disability benefits immediately before the compulsory vacation period for injury sustained while engaged in employment for that employer shall continue to receive those benefits.

6. Temporary disability, during which compensation shall be payable for loss of earnings, shall include the period during which an employee could return to a restricted type of work during the healing period, unless any of the following apply:

(a) Suitable employment that is within the physical and mental limitations of the employee is furnished to the employee by the employer or some other employer. For purposes of this paragraph, if the employer or some other employer makes a good faith offer of suitable employment that is within the physical and mental limitations of the employee and if the employee refuses without reasonable cause to accept that offer, the employee is considered to have returned to work as of the date of the offer at the earnings that the employee would have received but for the refusal. In case of a dispute as to the extent of an employee’s physical or mental limitations or as to what employment is suitable within those limitations, the employee may file an application under s. 102.17 and ss. 102.17 to 102.26 shall apply.

(b) The employee’s employment with the employer has been suspended or terminated due to the employee’s alleged commission of a crime, the circumstances of which are substantially related to that employment, and the employee has been charged with the commission of that crime. If the employee is not found guilty of the crime, compensation for temporary disability shall be payable in full.

(c) The employee’s employment with the employer has been suspended or terminated due to the employee’s violation of the employer’s policy concerning employee drug use during the period when the employee could return to a restricted type of work during the healing period. Compensation for temporary disability may be denied under this paragraph only if prior to the date of injury the employer’s policy concerning employee drug use was established in writing and regularly enforced by the employer.

(d) The employee has been convicted of a crime, is incarcerated, and is not available to return to a restricted type of work during the healing period.

(e) The employee’s employment with the employer has been suspended or terminated due to misconduct, as defined in s. 108.04 (5), or substantial fault, as defined in s. 108.04 (5g) (a), by the employee connected with the employee’s work.


Committee Note, 1971: Employees who have two jobs who have been injured at one of the work sites cases have been made totally disabled for work at either job. Sick leave benefits from the employer where injury occurred are to be considered, however, in determining eligibility for compensation from each employer. [Bill 371–A, 1971]
In case of permanent total disability, aggregate indemnity shall be weekly indemnity for the period that the employee may live. Total impairment for industrial use of both eyes, the loss of both arms at or near the shoulder, the loss of both legs at or near the hip, or the loss of one arm at the shoulder and one leg at the hip constitutes permanent total disability. This enumeration is not exclusive, but in other cases the division shall find the facts.

For permanent partial disability not covered by ss. 102.52 to 102.56, the aggregate number of weeks of indemnity shall bear such relation to 1,000 weeks as the nature of the injury bears to one of two-thirds of the average weekly earnings of the employee, the earnings to be computed as provided in s. 102.11. The weekly indemnity shall be in addition to compensation for the healing period and shall be for the period that the employee may live, not to exceed 1,000 weeks.

Where the permanent disability is covered by ss. 102.52, 102.53, and 102.55, such sections shall govern; provided, that in no case shall the percentage of permanent total disability be taken as more than 100 percent.

(a) The department shall promulgate rules establishing minimum permanent disability ratings for amputation levels, losses of motion, sensory losses, and surgical procedures resulting from injuries for which permanent partial disability is claimed under sub. (3) or (4). At least once every 8 years the department shall review and revise those minimum permanent disability ratings as necessary to reflect advances in the science of medicine. Before the department may revise those ratings, the department shall appoint a medical advisory committee under s. 227.13, composed of physicians practicing in one or more areas of specialization or treating disciplines within the medical profession, to review and recommend revision of those ratings, based on typical loss of function, to the department and the council on worker’s compensation.

(b) In considering an individual for appointment to the medical advisory committee under par. (a), the department shall consider the individual’s training and experience, the number of years the individual has been practicing in the individual’s area of specialization or treating discipline, any certifications by a recognized medical specialty board or other agency held by the individual, any recommendations made by organizations that regulate or promote profession standards in the area of specialization or treating discipline in which the individual practices, and any other factors that the department determines are relevant to the individual’s knowledge and ability to serve as a member of the medical advisory committee.

In cases where it is determined that periodic benefits granted by the federal social security act are paid to the employee because of disability, the benefits payable under this chapter shall be reduced as follows:

(a) For each dollar that the total monthly benefits payable under this chapter, excluding attorney fees and costs, plus the monthly benefits payable under the social security act for disability exceeds 50 percent of the employee’s average current earnings as determined by the social security administration, the benefits payable under this chapter shall be reduced by the same amount so that the total benefits payable shall not exceed 80 percent of the employee’s average current earnings. However, no total benefit payable under this chapter and under the federal social security act may be reduced to an amount less than the benefit payable under this chapter.

(b) No reduction under this section shall be made because of an increase granted by the social security administration as a cost of living adjustment.

(c) Failure of the employee, except for excusable neglect, to report social security disability payments within 30 days after written request shall allow the employer or insurance carrier to reduce weekly compensation benefits payable under this chapter by 75 percent. Compensation benefits otherwise payable shall be reimbursed to the employee after reporting.

(d) The employer or insurance carrier making such reduction shall report to the department the reduction and as requested by the department, furnish to the department satisfactory proof of the basis for the reduction.

(e) The reduction prescribed by this section shall be allowed only as to payments made on or after July 1, 1980, and shall be computed on the basis of payments made for temporary total, temporary partial, permanent total and permanent partial disability.

(f) No reduction shall take into account payments made under the social security act to dependents of an employee.

No reduction under this subsection shall be made on temporary disability benefits payable during a period in which an injured employee is receiving vocational rehabilitation services under s. 102.61 (1) or (1m).

(a) Where an injured employee claiming compensation for disability under sub. (2) or (3) has returned to work for the employer for whom he or she worked at the time of the injury, the permanent disability award shall be based upon the physical limitations resulting from the injury without regard to loss of earning capacity unless the actual wage loss in comparison with earnings at the time of injury equals or exceeds 15 percent.

(b) If during the period set forth in s. 102.17 (4) the employment relationship is terminated by the employer at the time of the injury or by the employee because his or her physical or mental limitations prevent his or her continuing in such employment, or if during that period a wage loss of 15 percent or more occurs, the division may reopen any award and make a redetermination taking into account loss of earning capacity.

(c) The determination of wage loss shall not take into account any period during which benefits are payable for temporary disability.

(d) The determination of wage loss shall not take into account any period during which benefits are paid under ch. 108.

For the purpose of determining wage loss, payment of benefits for permanent partial disability shall not be considered payment of wages.

(f) Wage loss shall be determined on wages, as defined in s. 102.11. Percentage of wage loss shall be calculated on the basis of actual average wages over a period of at least 13 weeks.

For purposes of this subsection, if the employee in good faith makes an offer of employment which is refused by the employee without reasonable cause, the employee is considered to have returned to work with the earnings the employee would have received had it not been for the refusal.

In all cases of permanent partial disability not covered by ss. 102.52 to 102.56, whether or not the employee has returned to work, the permanent partial disability shall not be less than that imposed by the physical limitations.
employment, the burden of showing that the claimant is employable shifts to the employer. Balczewski v. DILHR, 76 Wis. 2d 487, 251 N.W.2d 794 (1977).

Sub. (6) (a) includes only wage loss suffered at the employment where the injury occurred and does not include wage loss from a second job. Ruff v. LIRC, 159 Wis. 2d 239, 464 N.W.2d 56 (Ct. App. 1990).

LIRC exceeded its authority when it ordered temporary total disability payments for an indefinite future period. Such payments are not authorized for the period after a medical condition has stabilized and before the employer undergoes surgery. GTC Auto Parts v. LIRC, 184 Wis. 2d 450, 516 N.W.2d 317 (Ct. App. 1993).

Sub. (4) requires apportionment between scheduled and unscheduled injuries when both are present. Loss of earning capacity may not be awarded for scheduled injuries. Langhus v. LIRC, 206 Wis. 2d 494, 557 N.W.2d 450 (Ct. App. 1996), 96−0622.

In support for sub. (6) (b) to apply, the physical limitations must be from an unscheduled injury. Mireles v. LIRC, 226 Wis. 2d 53, 593 N.W.2d 859 (Ct. App. 1999), 98−1607.

Sub. (2) governs the permanent total disability indemnity. “Other cases” of disability under sub. (2) may include a combination of scheduled and unscheduled injuries. Mireles v. LIRC, 2000 WI 96, 237 Wis. 2d 669, 613 N.W.2d 875, 98−1607.

Sub. (6) (b) allows the department to recover as a reward for accounts of earning capacity from an unscheduled injury, even if a scheduled injury causes the termination of employment. Mireles v. LIRC, 2000 WI 96, 237 Wis. 2d 669, 613 N.W.2d 875, 98−1607.

Sub. (2) allows the awarding of permanent total disability that results from a combination of scheduled and unscheduled injuries, provided that the applicant establishes that a year−aseasonable period of the resultant disability is attributable to the unscheduled injury or injuries. Secura Insurance v. LIRC, 2000 WI App 237, 239 Wis. 2d 315, 620 N.W.2d 626, 08−0303.

A claimant is not required to present evidence of a job search as part of prima facie case of odd−lot unemployability, provided the claimant shows that because of the injury the claimant would have factors such as age, education, capacity, and skills that make it unlikely or impossible for him or her to be employable. Hebert v. LIRC, 2000 WI App 99, 242 Wis. 2d 223, 625 N.W.2d 476, 2000−0303.

The burden that shifts from the claimant to the employer under Balczewski is a burden of persuasion and not a sub−issue of whether a job exists that the claimant can do. The burden of persuasion on the other aspects of the claimant's case for permanent total disability benefits remains, as always, with the claimant. Beecher v. LIRC, 2001 WI App 88, 273 Wis. 2d 136, 682 N.W.2d 29, 02−1582.

Sub. (6) (a) applies to persons “claiming compensation,” which does not include persons already receiving compensation. Schreiber Foods, Inc. v. LIRC, 2009 WI App 40, 316 Wis. 2d 516, 765 N.W.2d 850, 08−1977.

Under Balczewski and Beecher, once a claimant has established a prima facie odd−lot case, the employer must prove that the claimant is probably employable and that an employable job is regularly and continuously available. It is not sufficient to show that the claimant is physically capable of performing light work and that light work is available. Neither Balczewski nor Beecher require an employer to disclose any prospective information of a claimant to a prospective employer to satisfy its rebuttal burden. The employer’s duty in ascertaining whether an actual job exists is rebuttal burden. The employer’s duty in ascertaining whether an actual job exists is

102.46 Death benefit. Where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit shall equal 4 times his or her average annual earnings, but when added to the disability indemnity paid and due at the time of death, shall not exceed two−thirds of weekly wage for the number of weeks set out in s. 102.44 (3).

History: 1973 c. 150; 1993 a. 492.

102.45 (5) (b), to the fund created under s. 102.65.

102.47 Death benefit, continued. If death occurs to an injured employee other than as a proximate result of the injury, before disability indemnity ceases, death benefit and burial expense allowance shall be as follows:

(1) Where the injury proximately causes permanent total disability, they shall be the same as if the injury had caused death, except that the burial expense allowance shall be included in the items subject to the limitation stated in s. 102.46. The amount available shall be applied toward burial expense before any is applied toward death benefit. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s. 102.44 (5) (b), to the fund created under s. 102.65.

(2) Where the injury proximately causes permanent partial disability, the unrecoverable compensation shall first be applied toward funeral expenses, not to exceed the amount specified in s. 102.50. Any remaining sum shall be paid to dependents, as provided in this section and ss. 102.46 and 102.48, and there is no liability for any other payments. All computations under this subsection shall take into consideration the present value of future payments. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s. 102.49 (5) (b), to the fund created under s. 102.65.


When a deceased worker dies before the level of permanent partial disability is established, the deceased's benefit is not wiped out. “Unrecovered compensation”, under sub. (2) is compensation that has not become due, or compensation for which a claim is not yet enforceable. It is not limited to compensation awarded but not yet paid. Edward Brothers, Inc. v. LIRC, 2007 WI App 128, 300 Wis. 2d 638, 731 N.W.2d 302, 06−0399.

102.475 Death benefit; law enforcement and correctional officers, fire fighters, rescue squad members, diving team members, national or state guard members and emergency management personnel. (1) SPECIAL BENEFIT. If the deceased employee is a law enforcement officer, correctional officer, fire fighter, rescue squad member, or diving team member, or if a deceased person is an employee or volunteer performing emergency management activities under ch. 323 during a state of emergency or a circumstance described in s. 323.12 (2) (c), who sustained an accidental injury while performing services growing out of and incidental to that employment or volunteer activity so that benefits are payable under s. 102.46 or 102.47 (1), the department shall voucher and pay from the appropriation under s. 20.445 (1) (aa) a sum equal to 75 percent of the primary death benefit as of the date of death, but not less than $50,000 to the persons wholly dependent upon the deceased. For purposes of this subsection, dependency shall be determined under ss. 102.49 and 102.51.

(2) PAYMENTS TO DEPENDENTS. (a) If there are more than 4 persons who are wholly dependent upon the deceased employee an additional benefit of $2,000 shall be paid for each dependent in excess of 4.

(b) If there is more than one person who is wholly dependent upon the deceased employee, the benefits under this section shall be apportioned between such dependents on the same proportional basis as the primary death benefit.

(c) Notwithstanding sub. (1), if there are partial dependents of the deceased employee who are entitled to benefits under s. 102.44, they shall be entitled to receive such partial dependency benefit determined under sub. (1) that their partial dependency benefit bears to the primary benefit payable to one wholly dependent upon the deceased. No payment to a partial dependent shall be less than $1,000.

(3) DISPUTES. In case of dispute, dependents may file applications as provided in s. 102.17, and ss. 102.17 to 102.27 shall apply. In such case, if the claim for a primary death benefit is compromised, any claim under this section shall be compromised on the same proportional basis. The attorney general shall represent the interests of the state in case of such dispute.

(5) MINORS. Benefits due to minors under this section may be paid as provided in s. 102.45.
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(6) Proof. In administering this section the department or the division may require reasonable proof of birth, marriage, domestic partnership under ch. 770, relationship, or dependency.

(7) Not to affect other rights, benefits or compensation. The compensation provided for in this section is in addition to, and not exclusive of, any pension rights, death benefits or other compensation otherwise payable by law.

(8) Definitions. As used in this section:

(a) “Correctional officer” means any person employed by the state or any political subdivision as a guard or officer whose principal duties are supervision and discipline of inmates at a penal institution, prison, jail, house of correction or other place of penal detention.

(b) “Diving team member” means a member of a legally organized diving team.

(c) “Fire fighter” means any person employed by the state or any political subdivision as a member or officer of a fire department or a member of a volunteer department, including the state fire marshal and deputies.

(d) “Law enforcement officer” means any person employed by the state or any political subdivision for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce, whether that enforcement authority extends to all laws or ordinances or is limited to specific laws or ordinances.

(e) “State” means the state of Wisconsin and its departments, divisions, boards, bureaus, commissions, authorities and colleges and universities.


102.48  Death benefit, continued. If no person who survives the deceased employee is wholly dependent upon the deceased employee for support, partial dependency and death benefits therefor shall be as follows:

(1) An unestranged surviving parent or parents to whose support the deceased has contributed less than $500 in the 52 weeks next preceding the injury causing death shall receive a death benefit of $6,500. If the parents are not living together, the department or the division shall divide this sum in such proportion as the department or division considers to be just, considering their ages and other facts bearing on dependency.

(2) In all other cases the death benefit shall be such sum as the department or the division determines to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employee but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employee made any contribution to support. The aggregate benefits in that case shall not exceed twice the average annual earnings of the deceased or 4 times the contributions of the deceased to the support of his or her dependents during the year immediately preceding the deceased employee’s death, whichever amount is the greater. In no event shall the aggregate benefits in that case exceed the amount that would accrue to a person who is solely and wholly dependent. When there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term “support” as used in ss. 102.42 to 102.63 shall include contributions to the capital fund of the dependents for their necessary comfort.

(3) Except as otherwise provided, a death benefit, other than burial expenses, shall be paid in weekly installments corresponding in amount to two-thirds of the weekly earnings of the employee, until otherwise ordered by the department or the division.

History: 1975 c. 147; 1979 c. 278; 1989 a. 64; 1993 a. 492; 2015 a. 55.

102.49  Additional death benefit for children, state fund. (1) Subject to any certificate filed under s. 102.65 (4), when the beneficiary under s. 102.46 or 102.47 (1) is the spouse or domestic partner under ch. 770 of the deceased employee and is wholly dependent on the deceased employee for support, an additional death benefit shall be paid from the funds provided by sub. (5) for each child by their marriage or domestic partnership under ch. 770 who is living at the time of the death of the employee and who is likewise wholly dependent on the deceased employee for support. That payment shall commence when primary death benefit payments are completed or, if advancement of compensation has been paid, when payments would normally have been completed. Payments shall continue at the rate of 10 percent of the surviving parent’s weekly indemnity until the child’s 18th birthday. If the child is physically or mentally incapacitated, payments may be continued beyond the child’s 18th birthday but the payments may not continue for more than a total of 15 years.

(2) A child lawfully adopted by the deceased employee and the surviving spouse or a domestic partner under ch. 770, prior to the time of the injury, and a child not the deceased employee’s own birth or adoption but living with the deceased employee as a member of the deceased employee’s family at the time of the injury shall for the purpose of this section be taken as a child by their marriage or domestic partnership under ch. 770.

(3) If the employee leaves a spouse or domestic partner under ch. 770 wholly dependent and also a child by a former marriage, domestic partnership under ch. 770, or adoption, likewise wholly dependent, aggregate benefits shall be the same in amount as if the child were the child of the surviving spouse or partner, and the entire benefit shall be apportioned to the dependents in the amounts that the department or the division determines to be just, considering the ages of the dependents and other factors bearing on dependency. The benefit awarded to the surviving spouse or partner shall not exceed 4 times the average annual earnings of the deceased employee.

(4) Dependency of any child for the purposes of this section shall be determined according to s. 102.51 (1), in like manner as would be done if there was no surviving dependent parent.

(5) (a) In each case of injury resulting in death, the employer or insurer shall pay into the state treasury the sum of $20,000.

(b) In addition to the payment required under par. (a), in each case of injury resulting in death leaving no person dependent for support, the employer or insurer shall pay into the state treasury the amount of the death benefit otherwise payable, minus any payment made under s. 102.48 (1), in 5 equal annual installments with the first installment due as of the date of death.

(c) In addition to the payment required under par. (a), in each case of injury resulting in death, leaving one or more persons partially dependent for support, the employer or insurer shall pay into the state treasury an amount which, when added to the sums paid or to be paid on account of partial dependency and under s. 102.48 (1), shall equal the death benefit payable to a person wholly dependent.

(d) The payment into the state treasury shall be made in all such cases regardless of whether the dependents or personal representatives of the deceased employee commence action against a third party under s. 102.29. If the payment is not made within 20 days after the department makes request therefor, any sum payable shall bear interest at the rate of 7 percent per year.

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

(6) The department or the division may award the additional benefits payable under this section to the surviving parent of the child, to the child’s guardian, or to such other person, bank, or trust company for the child’s use as may be found best calculated to
conserves the interests of the child. If the child dies while benefits are still payable, there shall be paid the reasonable expense for burial, not exceeding $1,500.

(7) All payments received under this section shall be deposited in the fund established by s. 102.65.


Cross-reference: See also s. DWD 80.48, Wis. adm. code.

102.50 Burial expenses. In all cases in which the death of an employee proximately results from the injury, the employer or insurer shall pay the actual expense for burial, not exceeding $10,000.


102.51 Dependents. (1) WHO ARE. (a) The following persons are entitled to death benefits as if they are solely and wholly dependent for support on a deceased employee:

1. A wife upon a husband with whom she is living at the time of his death.

2. A husband upon a wife with whom he is living at the time of her death.

3. A domestic partner under ch. 770 upon his or her partner with whom he or she is living at the time of the partner’s death.

4. A child under the age of 18 years, but physically or mentally incapacitated from earning, upon the parent with whom he or she is living at the time of the death of the parent, there being no surviving dependent parent.

(2) WHERE ARE NOT. (a) No person shall be considered a dependent unless that person is a spouse, a domestic partner under ch. 770, a divorced spouse who has not remarried, or a lineal descendant, lineal ancestor, brother, sister, or other member of the family, whether by blood or by adoption, of the deceased employee.

(b) If for 8 years or more prior to the date of injury a deceased employee has been a resident of the United States, it shall be conclusively presumed that no person who has remained a nonresident alien during that period is either totally or partially dependent upon the deceased employee for support.

(c) No person who is a nonresident alien shall be found to be either totally or partially dependent on a deceased employee for support who cannot establish dependency by proving contributions from the deceased employee by written evidence or tokens of the transfer of money, such as drafts, letters of credit, microfilm or other copies of paid share drafts, canceled checks, or receipts for the payment to any bank, express company, United States post office, or other agency commercially engaged in the transfer of funds from one country to another, for transmission of funds on behalf of said deceased employee to such nonresident alien claiming dependency. This provision shall not be applicable unless the employee has been continuously in the United States for at least one year prior to his or her injury, and has been remuneratively employed therein for at least 6 months.

(3) DIVISION AMONG DEPENDENTS. If there is more than one person wholly or partially dependent on a deceased employee, the death benefit shall be divided between those dependents in such proportion as the department or the division determines to be just, considering their ages and other facts bearing on their dependency.

(4) DEPENDENCY AS OF THE DATE OF DEATH. Questions as to who is a dependent and the extent of his or her dependency shall be determined as of the date of the death of the employee, and the dependent’s right to any death benefit becomes fixed at that time, regardless of any subsequent change in conditions.

(5) DEPENDENT ALIEN. In cases of the death of a dependent whose right to a death benefit has become fixed, so much of the benefit as is unpaid is payable to the dependent’s personal representatives in gross, unless the department or the division determines that the unpaid benefit shall be reassigned under sub. (6) and paid to any other dependent who is physically or mentally incapacitated or a minor.

For purposes of this subsection, a child of the employee who is born after the death of the employee is considered to be a dependent as of the date of death.

(6) BENEFITS ACCRUE TO MINOR DEPENDENT CHILD. Benefits accruing to a minor dependent child may be awarded to either parent in the discretion of the department or the division. Notwithstanding sub. (1), the department or the division may reassign the death benefit as between a surviving spouse or a domestic partner under ch. 770 and any children specified in sub. (1) and s. 102.49 in accordance with their respective needs for the death benefit.

(7) CERTAIN DEFENSE BARRED. In proceedings for the collection of primary death benefit or burial expense it shall not be a defense that the applicant, either individually or as a partner or member, was an employer of the deceased.

102.52 Permanent partial disability schedule. In cases included in the following schedule of permanent partial disabilities indemnity shall be paid for the healing period, and in addition, for the period specified, at the rate of two-thirds of the average weekly earnings of the employee, to be computed as provided in s. 102.11:

(1) The loss of an arm at the shoulder, 500 weeks;

(2) The loss of an arm at the elbow, 450 weeks;

(3) The loss of a hand, 400 weeks;

(4) The loss of a palm where the thumb remains, 325 weeks;

(5) The loss of a thumb and the metacarpal bone thereof, 160 weeks;

(6) The loss of a thumb at the proximal joint, 120 weeks;

(7) The loss of a thumb at the distal joint, 50 weeks;

(8) The loss of all fingers on one hand at their proximal joints, 225 weeks;

(9) Losses of fingers on each hand as follows:

(a) An index finger and the metacarpal bone thereof, 60 weeks;

(b) An index finger at the proximal joint, 50 weeks;

(c) An index finger at the second joint, 30 weeks;

(d) An index finger at the distal joint, 12 weeks;

(e) A middle finger and the metacarpal bone thereof, 45 weeks;

(f) A middle finger at the proximal joint, 35 weeks;
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- (g) A middle finger at the second joint, 20 weeks;
- (h) A middle finger at the distal joint, 8 weeks;
- (i) A ring finger and the metacarpal bone thereof, 26 weeks;
- (j) A ring finger at the proximal joint, 20 weeks;
- (k) A ring finger at the second joint, 15 weeks;
- (L) A ring finger at the distal joint, 6 weeks;
- (m) A little finger and the metacarpal bone thereof, 28 weeks;
- (n) A little finger at the proximal joint, 22 weeks;
- (o) A little finger at the second joint, 16 weeks;
- (p) A little finger at the distal joint, 6 weeks;
- (10) The loss of a leg at the hip joint, 300 weeks;
- (11) The loss of a leg at the knee, 425 weeks;
- (12) The loss of a foot at the ankle, 250 weeks;
- (13) The loss of the great toe with the metatarsal bone thereof, 83 1/3 weeks;
- (14) Losses of toes on each foot as follows:
  - (a) A great toe at the proximal joint, 25 weeks;
  - (b) A great toe at the distal joint, 12 weeks;
  - (c) The second toe with the metatarsal bone thereof, 25 weeks;
  - (d) The second toe at the proximal joint, 8 weeks;
  - (e) The second toe at the second joint, 6 weeks;
  - (f) The second toe at the distal joint, 4 weeks;
  - (g) The third, fourth or little toe with the metatarsal bone thereof, 20 weeks;
  - (h) The third, fourth or little toe at the proximal joint, 6 weeks;
  - (i) The third, fourth or little toe at the second or distal joint, 4 weeks;
  - (15) The loss of an eye by enucleation or evisceration, 275 weeks;
  - (16) Total impairment of one eye for industrial use, 250 weeks;
  - (17) Total deafness from accident or sudden trauma, 330 weeks;
  - (18) Total deafness of one ear from accident or sudden trauma, 55 weeks.

**History:** 1973 c. 150; 1975 c. 147; 1979 c. 278.

**Cross-reference:** See also ss. DWD 80.32 and 80.50, Wis. adm. code.

In a proceeding brought by an employee who suffered total deafness in one ear, a skull fracture, loss of taste and smell, facial paralysis, and periods of intermittent headaches and dizziness, the department did not err in determining that the hearing loss was a scheduled disability under s. 102.52, as the period of indemnity shall be pay-able for total occupational deafness of one ear, 36 weeks. However, had the employee consulted the department in that proceeding, the department would have informed the employee that the period for which indemnity would be payable is based on the loss and indemnity applicable in case of amputation at the joint next nearer the body as such injury bears to one of amputation at the joint nearer the body.

102.55 **Application of schedules.** (1) Whenever amputation of a member is made between any 2 joints mentioned in the schedule in s. 102.52 the determined loss and resultant indemnity therefor shall bear such relation to the loss and indemnity applicable in case of amputation at the joint next nearer the body as such injury bears to one of amputation at the joint nearer the body.

(2) For the purposes of this schedule permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

(3) For all other injuries to the members of the body or its faculties that are specified in the schedule under s. 102.52 resulting in permanent disability, though the member is not actually severed or the faculty is not totally lost, compensation shall bear such relation to the compensation named in the schedule as the disability bears to the disability named in the schedule. Indemnity in those cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting after the healing period as found by the department or the division.

**History:** 1931 a. 81.

102.555 **Occupational deafness; definitions.** (1) In this section:

- (a) “Noise” means sound capable of producing occupational deafness.
- (b) “Noisy employment” means employment in the performance of which an employee is subjected to noise.
- (c) “Occupational deafness” means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

(2) No benefits shall be payable for temporary total or temporary partial disability under this chapter for loss of hearing due to prolonged exposure to noise.

(3) An employee who because of occupational deafness is transferred by his or her employer to other noisy employment and thereby sustains actual wage loss shall be compensated at the rate provided in s. 102.43 (2), not exceeding $7,000 in the aggregate from all employers. “Time of injury”, “occurrence of injury”, and “date of injury” in such case mean the date of wage loss.

(4) Subject to the limitations provided in this section, there shall be payable for total occupational deafness of one ear, 36 weeks of compensation; for total occupational deafness of both ears, 216 weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named in this section as disabilities bear to the maximum disabilities provided in this section. In cases covered by this subsection, “time of injury”, “occurrence of injury”, or “date of injury” shall, at the option of the employee, be the date of occurrence of any of the following events to an employee:

  - (a) Transfer to nonnoisy employment by an employer whose employment has caused occupational deafness;
  - (b) The last day actually worked before retiring, regardless of vacation pay or time, sick leave or any other benefit to which the employee is entitled;
  - (c) Termination of the employer–employee relationship;
  - (d) Layoff, provided the layoff is complete and continuous for 6 months.

(5) No claim under sub. (4) may be filed until 7 consecutive days of removal from noisy employment after the time of injury.

**History:** 1975 c. 147; 1979 c. 278; 2015 a. 55.
except that under sub. (4) (d) the 7 consecutive days’ period may commence within the last 2 months of layoff.

(6) The limitation provisions in this chapter shall control claims arising under this section. Such provisions shall run from the first date upon which claim may be filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or hearing tests have been conducted by a competent medical specialist after the employee has been removed from the noisy environment for a period of 2 months.

(7) No payment shall be made to an employee under this section unless the employee shall have worked in noisy employment for a total period of at least 90 days for the employer from whom the employee claims compensation.

(8) An employer is liable for the entire occupational deafness to which his or her employment has contributed; but if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to noise within the 2 months preceding such test, the employer is not liable for previous loss so established nor is the employer liable for any loss for which compensation has previously been paid or awarded.

(9) Any amount paid to an employee under this section by any employer shall be credited against compensation payable by any employer for occupational deafness under sub. (3) and (4). No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this section for total occupational deafness.

(10) No compensation may be paid for tinnitus unless a hearing test demonstrates a compensable hearing loss other than tinnitus. For injuries occurring on or after January 1, 1992, no compensation may be paid for tinnitus.

(11) Compensation under s. 102.66 for permanent partial disability due to occupational deafness may be paid only if the loss of hearing exceeds 20 percent of binaural hearing loss.

(12) (a) An employer, the department, or the division is not liable for the expense of any examination or test for hearing loss, any evaluation of such an exam or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effect of hearing loss unless it is determined that compensation for occupational deafness is payable under sub. (3), (4), or (11).

(b) For a case of occupational deafness in which the date of injury is on or after April 1, 2008, this subsection applies beginning on that date. Notwithstanding ss. 102.03 (4) and 102.17 (4), for a case of occupational deafness in which the date of injury is before April 1, 2008, this subsection applies beginning on January 1, 2012.


Cross-reference: See also s. DWD 80.25, Wis. adm. code.

Committee Note, 1971: Where an employer discontinues a noisy operation and transfers the employees to nonnoisy employment, they have been unable to make claim for occupational deafness under the conditions of sub. (b), (c) or (d) were met. The employee will now have the option of filing a claim at the time of transfer at the current rate of compensation with a 2 1/2 percent reduction for each year of age over 50 or waiting until he meets the conditions of sub. (b), (c) or (d) when he may file claim at the then-current rate of compensation with a 1/2 percent reduction for each year of age over 50. [Bill 371-A]

LRRC’s allowance of a disfigurement award based on a limp was a reasonable interpretation of this section. Nothing in sub. (1) limits disfigurement to amputations, scars, and burns. County of Dane v. Labor and Industry Review Commission, 2009 WI 9, 315 Wis. 2d 293, 759 N.W.2d 571, 06–2695.

102.565 Toxic or hazardous exposure; medical examination; conditions of liability. (1) When, as a result of exposure in the course of employment over a period of time to toxic or hazardous substances or conditions, an employer or employee for occupational deafness under sub. (3) and (4) of this section may not allow that compensation unless the employee suffers an actual wage loss due to the disfigurement.


102.565 Disfigurement. (1) Subject to sub. (2), if an employee is permanently disfigured as to occasion potential wage loss due to the disfigurement, the department or the division may allow such sum as the department or the division considers just as compensation for the disfigurement, not exceeding the employee’s average annual earnings. In determining the potential for wage loss due to the disfigurement and the sum awarded, the department or the division shall take into account the age, education, training, and previous experience and earnings of the employee, the employee’s present occupation and earnings, and the likelihood of future suitable occupational change. Consideration for disfigurement allowance is confined to those areas of the body that are exposed in the normal course of employment. The department or the division shall also take into account the appearance of the disfigurement, its location, and the likelihood of its exposure in occupations for which the employee is suited.

(2) If an employee who claims compensation under sub. (1) returns to work for the employer who employed the employee at the time of the injury, or is offered employment with that employer, at the same or a higher wage, the department or the division may not allow that compensation unless the employee suffers an actual wage loss due to the disfigurement.

(3) If any evaluation of such an exam or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effect of hearing loss is determined that compensation for occupational deafness is payable under sub. (3), (4), or (11), the employee will now have the option of filing a claim at the time of transfer at the current rate of compensation with a 1/2 percent reduction for each year of age over 50. [Bill 371-A]
time for the employer from whom he or she claims compensation for exposing him or her to toxic or hazardous conditions.

(5) Payment of a benefit under this section to an employee shall stop such employee from any further recovery whatsoever from any employer under this section.

History: 1997 c. 29, 195; 1979 c. 278; 2015 a. 55.

Sub. (1) requires that an employee’s termination be connected to the employment that caused the employee’s disability to disease. General Castings Corp. v. Winstead, 156 Wis. 2d 752, 457 N.W.2d 557 (Ct. App. 1990).

102.57 Violations of safety provisions, penalty. If injury is caused by the failure of the employer to comply with any statute, rule, or order of the department of safety and professional services, compensation and death benefits provided in this chapter shall be increased by 15 percent but the total increase may not exceed $15,000. Failure of an employer reasonably to enforce compliance by employees with any statute, rule, or order of the department of safety and professional services constitutes failure by the employer to comply with that statute, rule, or order.


This section and s. 102.58 may be applicable in the same case if the negligence of both the employer and employee are causes of the employee’s injury. Milwaukee Forge v. DLHR, 66 Wis. 2d 428, 225 N.W.2d 476 (1975).


The application of this section is not restricted to statutes “of the” department of workforce development. Statutes “not of” departments of the state. The reasonable reading of this section is that “of the department” modifies “order” and not “statute.” The only word that modifies “statute” in the first sentence of the section is “any.” This section allows an administrative law judge to increase worker’s compensation benefits if it finds that the employer failed to comply with any statute. A violation of a federal OSHA standard was not a violation of a “statute, rule, or order of the department” but was evidence of a Wisconsin statute, the safe place statute, s. 101.11. Sohn Manufacturing Inc. v. LIRC, 2013 WI App 112, 350 Wis. 2d 469, 838 N.W.2d 131, 12–2566.

This section and s. 102.57 may be applicable in the same case if the negligence of both the employer and employee are causes of the employee’s injury. Milwaukee Forge v. DLHR, 66 Wis. 2d 428, 225 N.W.2d 476 (1975).

102.58 Decreased compensation. If injury is caused by the failure of the employee to use safety devices that are provided in accordance with any statute, rule, or order of the department of safety and professional services and that are adequately maintained, and the use of which is reasonably enforced by the employer, or if injury results from the employee’s failure to obey any reasonable safety rule adopted and reasonably enforced by the employer for the safety of the employee and of which the employee has notice, the compensation and death benefit provided in this chapter shall be reduced by 15 percent but the total reduction may not exceed $15,000. If an employee violates the employer’s policy concerning employee drug or alcohol use and is injured, and if that violation is causal to the employee’s injury, no compensation or death benefits shall be payable to the injured employee or a dependent of the injured employee. Nothing in this section shall reduce or eliminate an employer’s liability for incidental compensation under s. 102.42 (1) to (8) or drug treatment under s. 102.425.


The burden of proof is on the employer to establish not only the fact of intoxication, but also a causal connection between the condition and the injury or accident. Haller Beverage Corporation v. DLHR, 49 Wis. 2d 233, 181 N.W.2d 418 (1970).

Whether a traveling employee’s multiple drinks at a tavern was a deviation was irrelevant when the employee was injured while engaged in a later act reasonably necessary to living. Under this section, intoxication does not defeat a worker’s compensation claim but only decreases the benefits. Heritage Mutual Insurance Co. v. Larsen, 2001 WI 30, 242 Wis. 2d 47, 624 N.W.2d 129, 96–3577.

102.59 Preexisting disability, indemnity. (1) Subject to any certificate filed under s. 102.65 (4), if at the time of injury an employee has permanent disability that it had resulted from that injury would have entitled the employee to indemnity for 200 weeks and if as a result of that injury the employee incurs further permanent disability that entitles the employee to indemnity for 200 weeks, the employee shall be paid from the funds provided in this section additional compensation equivalent to the amount that would be payable for that previous disability if that previous disability had resulted from that injury or the amount that is payable for that further disability, whichever is less, except that an employee may not be paid that additional compensation if the employee has already received compensation under this subsection. If the previous and further disabilities result in permanent total disability, the additional compensation shall be in such amount as will complete the payments that would have been due had the permanent total disability resulted from that injury. This additional compensation accrues from, and may not be paid to any person before, the end of the period for which compensation for permanent disability resulting from the injury is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7). No compromise agreement of liability for this additional compensation may provide for any lump sum payment.

(1m) A compromise order issued under s. 102.16 (1) may not be admitted as evidence in any action or proceeding for benefits compensable under this section.

(2) In the case of the loss of or of the total impairment of a hand, arm, foot, leg, or eye, the employer shall pay $20,000 into the state treasury. The payment shall be paid in all such cases regardless of whether the employee or the employee’s dependent or personal representative commences action against a 3rd party as provided in s. 102.29.

(3) All payments received under this section shall be deposited in the fund established by s. 102.65.


Cross-reference: See also s. DWD 80.68, Wis. adm. code.

The fund is not liable for disability benefits when an employer was liable for permanent total disability. Green Bay Soap Co. v. DLHR, 87 Wis. 2d 561, 275 N.W.2d 190 (Ct. App. 1979).

102.60 Minor illegally employed. (1m) When the injury is sustained by a minor who is illegally employed, the employer, in addition to paying compensation to the minor and death benefits to the dependents of the minor, shall pay the following amounts into the state treasury, for deposit in the fund established under s. 102.65:

(a) An amount equal to the amount recoverable by the injured employee, but not to exceed $7,500, if the injured employee is a minor of permit age or older and at the time of the injury is employed, required, suffered, or permitted to work without a written permit issued under ch. 103, except as provided in pars. (b) to (d).

(b) An amount equal to double the amount recoverable by the injured employee, but not to exceed $15,000, if the injured employee is a minor of permit age and at the time of the injury is employed, required, suffered, or permitted to work without a permit in any place of employment or at any employment in or for which the department acting under ch. 103, has adopted a written resolution providing that permits shall not be issued.

(c) An amount equal to double the amount recoverable by the injured employee, but not to exceed $15,000, if the injured employee is a minor of permit age or older and at the time of the injury is employed, required, suffered, or permitted to work at prohibited employment.

(d) An amount equal to double the amount recoverable by the injured employee, but not to exceed $15,000, if the injured employee is a minor under permit age and is illegally employed.

(5) (a) A permit or certificate of age that is unlawfuly issued by an officer specified in ch. 103, or that is unlawfully altered after issuance, without fraud on the part of the employer, shall be considered a permit for purposes of this section.

(b) If the employer is misled in employing a minor illegally because of fraudulent written evidence of age presented by the minor, the employer is not required to pay the amounts specified in sub. (1m).
either the employer’s ability to provide suitable employment or a vocational rehabilitation counselor’s ability to recommend a rehabilitative training program. If the employer and employee cannot resolve the dispute within 30 days after the employee receives the employer’s report and documentation, the employer or employee may request a hearing before the division to determine the employee’s work restrictions. Within 30 days after the division determines the employee’s work restrictions, the employer shall provide to the employee in writing an offer of suitable employment or a statement that the employer has no suitable employment for the employee.

(1m) (a) If the department has determined under sub. (1) that an employee is eligible for vocational rehabilitation services under 29 USC 701 to 797b, but that the department cannot provide those services for the employee, the employee may select a private rehabilitation counselor certified by the department to determine whether the employee can return to suitable employment without rehabilitative training and, if that counselor determines that rehabilitative training is necessary, to develop a rehabilitative training program to restore as nearly as possible the employee to his or her preinjury earning capacity and potential.

(b) Notwithstanding s. 102.03 (4), an employee whose date of injury is before May 4, 1994, may receive private rehabilitative counseling and rehabilitative training under par. (a).

(c) The employer or insurance carrier shall pay the reasonable cost of any services provided for an employee by a private rehabilitation counselor under par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c) and by rule, if the private rehabilitation counselor determines that rehabilitative training is necessary, the reasonable cost of the rehabilitative training program recommended by that counselor, including the cost of tuition, fees, books, maintenance, and travel at the same rate as is provided for state officers and employees under s. 20.916 (8).

(1g) (a) In this subsection, “suitable employment” means employment that is within an employee’s permanent work restrictions, that the employee has the necessary physical capacity, knowledge, transferable skills, and ability to perform, and that pays not less than 90 percent of the employee’s preinjury average weekly wage, except that employment that pays 90 percent or more of the employee’s preinjury average weekly wage does not constitute suitable employment if any of the following apply:

1. The employee’s education, training, or employment experience demonstrates that the employee is on a career or vocational path, the employee’s average weekly wage on the date of injury does not reflect the average weekly wage that the employee reasonably could have been expected to earn in the demonstrated career or vocational path, and the permanent work restrictions caused by the injury impede the employee’s ability to pursue the demonstrated career or vocational path.

2. The employee was performing part-time employment at the time of the injury, the employee’s average weekly wage for compensation purposes is calculated under s. 102.11 (1) (f) 1. or 2., and that average weekly wage exceeds the employee’s gross average weekly wage for the part-time employment.

(b) If an employer offers an employee suitable employment as provided in par. (c), the employer or the employer’s insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) (b) or for the cost of tuition, fees, books, travel, and maintenance under sub. (1). Ineligibility for compensation under this paragraph does not preclude an employee from receiving vocational rehabilitation services under 29 USC 701 to 797b if the department determines that the employee is eligible to receive those services.

(c) On receiving notice that he or she is eligible to receive vocational rehabilitation services under 29 USC 701 to 797a, an employee shall provide the employer with a written report from a physician, chiropractor, psychologist, or podiatrist stating the employee’s permanent work restrictions. Within 60 days after receiving that report, the employer shall provide to the employee in writing an offer of suitable employment, a statement that the employer has no suitable employment for the employee, a report from a physician, chiropractor, psychologist, or podiatrist showing that the permanent work restrictions provided by the employee’s practitioner are in dispute and documentation showing that the difference in work restrictions would materially affect

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Updated 17–18 Wis. Stats.

WORKER’S COMPENSATION

102.61

Indemnity under rehabilitation law. (1) Subject to subs. (1g) and (1m), an employee who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instruction under 29 USC 701 to 797b, as administered by the agency or publisher for whom the person sells or distributes newspapers or magazines on the street or from house to house if the agency or publisher for whom the person sells or distributes newspapers or magazines establishes by affirmative proof that at the time of the injury the person was not employed with the actual or constructive knowledge of the agency or publisher.

(3) This section does not apply to liability arising under s. 102.06 unless the employer sought to be charged knew or should have known that the minor was illegally employed by the contractor or subcontractor.

History:
1975 c. 147 s. 37; 1975 c. 199; 1977 c. 29; 1995 a. 172; 2009 a. 206; 2015 a. 180; 2017 a. 11.
under sub. (1m) on account of training for a period in excess of 80 weeks in all, except as provided in s. 102.43 (5) (b).

(2) The division, the commission, and the courts shall determine the rights and liabilities of the parties under this section in like manner and with like effect as the division, the commission, and the courts determine other issues under this chapter. A determination under this subsection may include a determination based on the evidence regarding the cost or scope of the services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

(3) Nothing in this section prevents an employer or insurance carrier from providing an employee with the services of a private rehabilitation counselor or with rehabilitative training if the employee voluntarily accepts those services or that training.


Cross-reference: See also s. WIWD 40.49, Wis. adm. code.

Under ss. 102.42 (9) (a), 102.43 (5), and 102.61, the department may extend temporary disability, travel expense, and maintenance costs beyond 40 weeks if additional training is warranted. Belot Corp. v. State, 152 Wis. 2d 579, 449 N.W.2d 299 (Ct. App. 1989).

The provisions of this section encompass formalized courses of instruction only.

Johnson v. LIRC, 177 Wis. 2d 736, 503 N.W.2d 1 (Ct. App. 1993).

Nothing in ch. 102 provides that an injured employee can be denied vocational rehabilitation benefits when he or she is offered suitable employment after an injury and is subsequently fired for just cause. Oshkosh Corporation v. LIRC, 2011 WI App 42, 332 Wis. 2d 281, 796 N.W.2d 217, 10-1219.

102.62 Primary and secondary liability; unchanged. In case of liability under s. 102.57 or 102.60, the liability of the employer shall be primary and the liability of the insurance carrier shall be secondary. If proceedings are had before the division for the recovery of that liability, the division shall set forth in its award the amount and order of liability as provided in this section. Execution shall not be issued against the insurance carrier to satisfy any judgment covering that liability until execution has first been issued against the employer and has been returned unsatisfied as to any part of that liability. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for a liability under s. 102.57 or 102.60 is void. If the employer has been adjudged bankrupt or has made an assignment for the benefit of creditors, if the employer, other than an individual, has gone out of business or has been dissolved, or if the employer is a corporation and its charter has been forfeited or revoked, the insurer shall be liable for the payment of that liability without judgment or execution against the employer, but without altering the primary liability of the employer.

History: 2005 a. s. 172; 2015 a. s. 55.

102.63 Refunds by state. Whenever the department shall certify to the secretary of administration that excess payment has been made under s. 102.59 or under s. 102.49 (5) either because of mistake or otherwise, the secretary of administration shall within 5 days after receipt of such certificate direct an order against the fund in the state treasury into which such excess was paid, reimbursing such payor of such excess payment, together with interest actually earned thereon if the excess payment has been on deposit for at least 6 months.

History: 1981 c. 92; 2003 a. s. 33.

102.64 Attorney general shall represent state and commissioner. (1) Upon request of the department of administration, a representative of the department of justice shall represent the state in cases involving payment into or out of the state treasury under s. 20.865 (1) (fm), (kr), or (ur) or 102.29. The department of justice, after giving notice to the department of administration, may compromise the amount of those payments but such compromises shall be subject to review by the department or the division. If the spouse or domestic partner under ch. 770 of the deceased employee compromises his or her claim for a primary death benefit, the claim of the children of the employee under s. 102.49 shall be compromised on the same proportional basis, subject to approval by the department or the division. If the persons entitled to compensation on the basis of total dependency under s. 102.51 (1) compromise their claim, payments under s. 102.49 (5) (a) shall be compromised on the same proportional basis.

(2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. Except as provided in s. 102.65 (3), the department of justice shall represent the interests of the state in proceedings under s. 102.44 (1), 102.49, 102.59, 102.60, or 102.66. The department of justice may compromise claims in those proceedings, but the compromises are subject to review by the department or the division.

Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

(3) In any action to review an order or award of the commission, and upon any appeal therein to the court of appeals, the attorney general shall represent the state. Any party defendant shall be represented or not, except that in actions brought by the state the governor shall appoint an attorney to appear on behalf of the commission.

History: 1975 c. 147; 1985 a. s. 83, 134; 1977 c. 195; 1979 c. 221 s. 2; 1980 c. 85; 1981 c. 50; 1983 a. s. 192; 1985 a. s. 3745, 9710 (4); 1997 a. s. 307; 2001 a. s. 185; 2009 a. s. 27. 2011 a. s. 172; 2015 a. s. 55.

Sub. (3) does not result in providing public counsel for a private party litigant, because nowhere does the statute make the attorney general the claimant’s attorney, but expressly states that the attorney general shall appear on behalf of the department.

Hunter v. DILHR, 64 Wis. 2d 97, 218 N.W.2d 314 (1974).

102.65 Work injury supplemental benefit fund. (1) The moneys payable to the state treasury under ss. 102.35 (1), 102.47, 102.49, 102.59, and 102.60, together with all accrued interest on those moneys, and all interest payments received under s. 102.75 (2), shall constitute a separate nonlapsible fund designated as the work injury supplemental benefit fund. Moneys in the fund may be expended only as provided in s. 20.445 (1) (f) and may not be used for any other purpose of the state.

(2) For proper administration of the moneys available in the fund the department shall by order, set aside in the state treasury suitable reserves to carry to maturity the liability for benefits under ss. 102.44, 102.49, 102.59 and 102.66. Such moneys shall be invested by the investment board in accordance with s. 25.14 (5).

(3) The department of workforce development may retain the department of administration to process, investigate, and pay claims under ss. 102.44 (1), 102.49, 102.59, and 102.66. If retained by the department of workforce development, the department of administration may compromise a claim processed by that department, but a compromise made by that department is subject to review by the department of workforce development or the division. The department of workforce development shall pay for the services retained under this subsection from the appropriation account under s. 20.445 (1) (g).

(4) The secretary shall monitor the cash balance in, and incurred losses to, the work injury supplemental benefit fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the work injury supplemental benefit fund on known claims exceed 85 percent of the cash balance in that fund, the secretary shall consult with the council on worker’s compensation. If the secretary, after consulting with the council on worker’s compensation, determines that there is a reasonable likelihood that the cash balance in the work injury supplemental benefit fund may become inadequate to fund all claims under ss. 102.49, 102.59, and 102.66, the secretary shall file with the secretary of administration a certificate attesting that the cash balance in that fund is likely to become inadequate to fund
all claims under ss. 102.49, 102.59, and 102.66 and specifying one of the following:

(a) That payment of those claims will be made as provided in a schedule that the department shall promulgate by rule.
(b) A date after which payment of those claims will be reduced.
(c) A date after which no new claims under those provisions will be paid.


102.66 Payment of certain barred claims. (1) Subject to any certificate filed under s. 102.65 (4), if there is an otherwise meritorious claim for occupational disease, or for a traumatic injury described in s. 102.17 (4) in which the date of injury or death or last payment of compensation, other than for treatment or burial expenses, is before April 1, 2006, and if the claim is barred solely by the statute of limitations under s. 102.17 (4), the department or the division may, in lieu of worker’s compensation benefits, direct payment from the worker injury supplemental benefit fund under s. 102.65 of such compensation and such medical expenses as would otherwise be due, based on the date of injury, to or on behalf of the injured employee. The benefits shall be supplemental, to the extent of compensation liability, to any disability or medical benefits payable from any group insurance policy whose premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

(2) In the case of occupational disease, or of a traumatic injury described in s. 102.17 (4) in which the date of injury or death or last payment of compensation, other than for treatment for burial expenses, is before April 1, 2006, appropriate benefits may be awarded from the work injury supplemental benefit fund when the status or existence of the employer or its insurance carrier cannot be determined or when there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).


Cross-reference: See also s. DWD 80.06, Wis. adm. code.

This section authorizes the award of benefits for otherwise meritorious claims barred solely by the statute of limitations in effect at the time the claim arose. State v. DILHR, 101 Wis. 2d 396, 304 N.W.2d 758 (1981).

When a disabled worker could have claimed permanent total disability benefits under this section, but failed to do so before dying of causes unrelated to a compensable injury, a surviving dependent may not claim the disability benefits. State v. LIRC, 136 Wis. 2d 281, 401 N.W.2d 578 (1987).

102.75 Administrative expenses. (1) The department shall assess upon and collect from each licensed worker’s compensation insurance carrier and from each employer exempted under s. 102.28 (2) (b) or (bm) from the duty to insure under s. 102.28 (2) (a) the proportion of total costs and expenses incurred by the council on worker’s compensation for travel and research and by the department, the division, and the commission in the administration of this chapter for the current fiscal year, plus any deficiencies in collections and anticipated costs from the previous fiscal year, that the total indemnity paid or payable under this chapter by each such carrier and exempt employer in worker’s compensation cases initially closed during the preceding calendar year, other than for increased, double, or treble compensation, bore to the total indemnity paid in cases closed the previous calendar year under this chapter by all carriers, other than for increased, double, or treble compensation.

(b) The maximum amount that the department may collect under par. (a) in a calendar year is $5,000,000. If the amount determined collectible under par. (a) in a calendar year exceeds $5,000,000, the department shall collect $5,000,000 in the year in which the determination is made and, subject to the maximum amount collectible of $5,000,000 per calendar year, shall collect the excess in the next calendar year or in subsequent calendar years until that excess is collected in full.

(c) This subsection does not apply to claims for reimbursement under s. 102.44 (1) (c) 1. for supplemental benefits paid for injuries that occur on or after January 1, 2016.

1m The moneys collected under subs. (1) and (1g) and under ss. 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a separate nonlapsing fund designated as the worker’s compensation operations fund. Moneys in the fund may be expended only as provided in ss. 20.427 (1) (ra) and 20.445 (1) (ra), (rb), and (rp) and may not be used for any other purpose of the state.

(2) The department shall require each licensed worker’s compensation insurance carrier and employer exempted under s. 102.28 (2) (b) or (bm) from the duty to insure under s. 102.28 (2) (a) to make the payments required under sub. (1) for each fiscal year on such dates as the department prescribes. The department shall also require each licensed worker’s compensation insurance carrier to make the payments required under sub. (1g) for each fiscal year on those dates. Each such payment shall be a sum equal to a proportionate share of the annual costs and expenses assessed upon each carrier and employer as estimated by the department.

Interest shall accrue on amounts not paid within 30 days after the due date prescribed by the department under this subsection at the rate of 1 percent per month. All interest payments received under this subsection shall be deposited in the fund established under s. 102.65.

(4) From the appropriation under s. 20.445 (1) (ra), the department shall allocate the amounts that it collects in application fees from employers applying for exemption under s. 102.28 (2) (b) and the annual amount that it collects from employers that have been exempted under s. 102.28 (2) (b) to fund the activities of the department under s. 102.28 (2) (b) and (c) with respect to those employers.


Cross-reference: See also s. DWD 80.38, Wis. adm. code.

102.80 Uninsured employers fund. (1) There is established a separate, nonlapsing trust fund designated as the uninsured employers fund consisting of all the following:

(a) Amounts collected from uninsured employers under s. 102.82.

(b) Uninsured employer surcharges collected under s. 102.85 (4).

(c) Amounts collected from employees or dependents of employees under s. 102.81 (4) (b).

(e) All moneys received by the department for the uninsured employers fund from any other source.

(f) Amounts transferred to the uninsured employers fund from the appropriation account under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

(1m) The moneys collected or received under sub. (1), together with all accrued interest, shall constitute a separate nonlapsing fund designated as the uninsured employers fund. Moneys in the fund may be expended only as provided in s. 20.445 (1) (sm) and may not be used for any other purpose of the state.
(3) (a) If the cash balance in the uninsured employers fund equals or exceeds $4,000,000, the secretary shall consult the council on worker’s compensation within 45 days after that cash balance equals or exceeds $4,000,000. The secretary may file with the secretary of administration, within 15 days after consulting the council on worker’s compensation, a certificate attesting that the cash balance in the uninsured employers fund equals or exceeds $4,000,000.

(b) The department shall make the payments required under par. (a) from the uninsured employers fund, except that if the department has obtained reinsurance under sub. (2) and is unable to make those payments from the uninsured employers fund, the department’s reinsurer shall make those payments according to the terms of the contract of reinsurance.

(c) 1. The department shall pay a claim under par. (a) in excess of $1,000,000 from the uninsured employers fund in the first instance. If the claim is not covered by excess or stop−loss reinsurance under sub. (2), the secretary of administration shall transfer from the appropriation account under s. 20.445 (1) (ra) to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to the amount by which payments from the uninsured employers fund on the claim are in excess of $1,000,000.

2. Each calendar year the department shall file with the secretary of administration a certificate setting forth the number of claims in excess of $1,000,000 in the preceding year paid from the uninsured employers fund, the payments made from the uninsured employers fund on each such claim in the preceding year, and the total payments made from the uninsured employers fund on all such claims and, based on that information, the secretary of administration shall determine the amount to be transferred under subd. 1. in that calendar year.

3. The maximum amount that the secretary of administration may transfer under subd. 1. in a calendar year is $500,000. If the amount determined under subd. 2. is $500,000 or less, the secretary of administration shall transfer the amount determined under subd. 2. If the amount determined under subd. 2. exceeds $500,000, the secretary of administration shall transfer $500,000 in the calendar year in which the determination is made and, subject to the maximum transfer amount of $500,000 per calendar year, shall transfer that excess in the next calendar year or in subsequent calendar years until that excess is transferred in full.

(4) (a) If an uninsured employer who owes to the department any amount under s. 102.82 or 102.85 (4) transfers his or her business assets or activities, the transferee is liable for the amounts owed by the uninsured employer under s. 102.82 or 102.85 (4) if the department determines that all of the following conditions are satisfied:

1. At the time of the transfer, the uninsured employer and the transferee are owned or controlled in whole or in substantial part, either directly or indirectly, by the same interest or interests.

2. The transferee has continued or resumed the business of the uninsured employer, either in the same establishment or elsewhere, where the transferee has employed substantially the same employees as those the uninsured employer had employed in connection with the business assets or activities transferred.

(b) The department may collect from the transferee described in par. (a) an amount owed under s. 102.82 or 102.85 (4) using the procedures specified in ss. 102.83, 102.835 and 102.87 and the preference specified in s. 102.84 in the same manner as the department may collect from an uninsured employer.


102.81 Compensation for injured employee of uninsured employer. (1) (a) If an employee of an uninsured employer, other than an employee who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for which the uninsured employer is liable under s. 102.03, the department or the department’s reinsurer shall pay to or on behalf of the injured employee or to the employee’s dependents an amount equal to the compensation owed them by the uninsured employer under this chapter except penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) 3. and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60.

(b) The department shall make the payments required under par. (a) from the uninsured employers fund, except that if the department has obtained reinsurance under sub. (2) and is unable to make those payments from the uninsured employers fund, the department’s reinsurer shall make those payments according to the terms of the contract of reinsurance.

(c) 1. The department shall pay a claim under par. (a) in excess of $1,000,000 from the uninsured employers fund in the first instance. If the claim is not covered by excess or stop−loss reinsurance under sub. (2), the secretary of administration shall transfer from the appropriation account under s. 20.445 (1) (ra) to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to the amount by which payments from the uninsured employers fund on the claim are in excess of $1,000,000.

2. Each calendar year the department shall file with the secretary of administration a certificate setting forth the number of claims in excess of $1,000,000 in the preceding year paid from the uninsured employers fund, the payments made from the uninsured employers fund on each such claim in the preceding year, and the total payments made from the uninsured employers fund on all such claims and, based on that information, the secretary of administration shall determine the amount to be transferred under subd. 1. in that calendar year.

3. The maximum amount that the secretary of administration may transfer under subd. 1. in a calendar year is $500,000. If the amount determined under subd. 2. is $500,000 or less, the secretary of administration shall transfer the amount determined under subd. 2. If the amount determined under subd. 2. exceeds $500,000, the secretary of administration shall transfer $500,000 in the calendar year in which the determination is made and, subject to the maximum transfer amount of $500,000 per calendar year, shall transfer that excess in the next calendar year or in subsequent calendar years until that excess is transferred in full.

(2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop−loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound administration of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch. 16, except s. 16.753, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

(3) An injured employee of an uninsured employer or his or her dependents may attempt to recover from an uninsured employer, or a 3rd party under s. 102.29, while receiving or attempting to receive payment under sub. (1).

(4) An injured employee, or the dependent of an injured employee, who received one or more payments under sub. (1) shall do all of the following:

(a) If the employee or dependent begins an action to recover compensation from the employee’s employer or a 3rd party liable under s. 102.29, provide to the department a copy of all papers filed by any party in the action.

(b) If the employee or dependent receives compensation from the employee’s employer or a 3rd party liable under s. 102.29, pay to the department the lesser of the following:
1. The amount after attorney fees and costs that the employee or dependent received under sub. (1).

2. The amount after attorney fees and costs that the employee or dependent received from the employer or 3rd party.

(5) The department of justice may bring an action to collect the payment under sub. (4).

(6) (a) Subject to par. (b), an employee, a dependent of an employee, an uninsured employer, a 3rd party who is liable under s. 102.29 or the department may enter into an agreement to settle liabilities under this chapter.

(b) A settlement under par. (a) is void without the department’s written approval.

(7) This section applies to injuries occurring on the first day of the first July beginning after the date that the secretary files a certificate under s. 102.80 (3) (a), except that if the secretary files a certificate under s. 102.80 (3) (ag) this section does not apply to claims filed on or after the date specified in that certificate.


Cross-reference: See also s. DWD 80.62, Wis. adm. code.

Section 102.80 (1) (bp) does not govern the conduct of the Department or its agent and does not impose any penalty on the department or its agent for bad faith conduct in administering the Uninsured Employers Fund. Section 102.18 (1) (bp) constitutes an exclusive remedy for the bad faith conduct of an employer or an insurance carrier. Because s. 102.18 (1) (bp) does not apply to the department’s agent, it does not provide an exclusive remedy for the agent’s bad faith. Moreover, sub. (1) (a) exempts the Department from paying its share of a bad faith judgment. An interest imposed on an employer or an insurance carrier for their misdeeds, but nothing in sub. (1) (a) exempts the department or its agent from liability for its bad faith conduct in processing claims.


102.82 Uninsured employer payments. (1) Except as provided in sub. (2) (ar), an uninsured employer shall reimburse the department for any payment made under s. 102.81 (1) to or on behalf of an employee of the uninsured employer or to an employee’s dependents and for any expenses paid by the department in administering the claim of the employee or dependents, less amounts repaid by the employee or dependents under s. 102.81 (4) (b).

(b) The reimbursement owed under this subsection is due within 30 days after the date on which the department notifies the uninsured employer that the reimbursement is owed. Interest shall accrue on amounts not paid when due at the rate of 1 percent per month.

(2) (a) Except as provided in paras. (ag), (am) and (ar), all uninsured employers shall pay to the department the greater of the following:

1. Twice the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker’s compensation insurance in the preceding 3-year period based on the employer’s payroll in the preceding 3 years.

2. Seven hundred and fifty dollars.

(ag) An uninsured employer who is liable to the department under par. (a) shall pay to the department, in lieu of the payment required under par. (a) 2., $100 per day for each day that the employer is uninsured if all of the following apply:

1. The employer is uninsured for 7 consecutive days or less.

2. The employer has not previously been uninsured.

3. No injury for which the employer is liable under s. 102.03 has occurred during the period in which the employer is uninsured.

(am) The department may waive any payment owed under par. (a) by an uninsured employer if the department determines that the uninsured employer is subject to this chapter only because the uninsured employer has elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).

(ar) The department may waive any payment owed under par. (a) or (ag) or sub. (1) if the department determines that the sole reason for the uninsured employer’s failure to comply with s. 102.28 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

(b) The payment owed under par. (a) or (ag) is due within 30 days from the date on which the employer is notified. Interest shall accrue on amounts not paid when due at the rate of 1 percent per month.

(c) The department of justice or, if the department of justice consents, the department of workforce development may bring an action in circuit court to recover payments and interest owed to the department of workforce development under this section.

(3) (a) When an employee dies as a result of an injury for which an uninsured employer is liable under s. 102.03, the uninsured employer shall pay $1,000 to the department.

(b) The payment under par. (a) is in addition to any benefits or other compensation paid to an employee or survivors or the work injury supplemental benefit fund under s. 102.46 to 102.51.


102.83 Collection of uninsured employer payments. (1) (a) 1. If an uninsured employer or any individual who is found personally liable under sub. (8) fails to pay to the department any amount owed to the department under s. 102.82 and no proceeding for review is pending, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the uninsured employer or the individual mentioned in the warrant and the amount of the payments, interest, costs, and other fees for which the warrant is issued and the date when the warrant is entered.

3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien on the right, title, and interest of the uninsured employer or the individual in all of that person’s real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant under subd. 1. and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

4. After the warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the uninsured employer or the individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the uninsured employer or the individual to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 60 days after receipt of the warrant.

(b) The clerk of circuit court shall accept and enter the warrant in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the uninsured employer or the individual when satisfaction or release is presented for entry.

(2) The department may issue a warrant of like terms, force, and effect to any employee or other agent of the department, who may file a copy of the warrant with the clerk of circuit court of any county in the state, and thereupon the clerk of circuit court shall enter the warrant in the judgment and lien docket and the warrant shall become a lien in the same manner, and with the same force and effect, as provided in sub. (1). In the execution of the warrant, the employee or other agent shall have all the powers conferred by law upon a sheriff, but may not collect from the uninsured
employer or the individual any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.

(3) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the amount due for payments, interest, costs, and other fees as if the department had recovered judgment against the uninsured employer or the individual and an execution had been returned wholly or partially not satisfied.

(4) When the payments, interest, costs, and other fees specified in a warrant have been paid to the department, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter the satisfaction of the judgment in the judgment and lien docket. The department shall send a copy of the satisfaction to the uninsured employer or the individual.

(5) The department, if it finds that the interests of the state will not be jeopardized, and upon such conditions as it may exact, may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title. The clerk of circuit court shall enter the release upon presentation of the release to the clerk and payment of the fee for filing the release and the release shall be conclusive proof that the lien or cloud upon the title of the property covered by the release is extinguished.

(6) At any time after the filing of a warrant, the department may commence and maintain a garnishee action as provided by ch. 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a judgment. The place of trial of an action under ch. 811 or 812 may be either in Dane County or the county where the debtor resides and may not be changed from the county in which the action is commenced, except upon consent of the parties.

(7) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any liens attached by it.

(8) Any officer or director of an uninsured employer that is a corporation or any member of the corporation who is liable for any debt fails to pay that debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. If the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the debtor until the debt and expenses of the levy are fully paid.

(3) DUTIES TO SURRENDER. Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(4) FAILURE TO SURRENDER. (a) Any debtor who fails to surrender any property or rights to property that is subject to levy, upon demand by the department, is subject to proceedings to enforce the amount of the levy.

(b) Any 3rd party who fails to surrender any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this paragraph for more than 25 percent of the debt. The department shall serve a final demand as provided under sub. (13) on any 3rd party who fails to surrender property. Proceedings may not be initiated by the department until 5 days after service of the final demand. The department shall issue a determination under s. 102.82 to the 3rd party for the amount of the liability.

(c) When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the department for which the levy is made, the 3rd party is discharged from any obligation or liability to the debtor with respect to the property or rights to the property arising from the surrender or payment to the department.

(5) ACTIONS AGAINST THIS STATE. (a) If the department has levied upon property, any person, other than the debtor who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property, and who claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. That action may be brought whether or not that property has been surrendered to the department. The court may grant only the relief under par. (b). No other action to question the validity of or to restrain or enjoin a levy by the department may be maintained.

(b) In an action under par. (a), if a levy would irreparably injure rights to property, the court may enjoin the enforcement of that levy. If the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

(c) For purposes of an adjudication under this subsection, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

(6) DETERMINATION OF EXPENSES. The department shall determine its costs and expenses to be paid in all cases of levy.

(7) USE OF PROCEEDS. (a) The department shall apply all money obtained under this section first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the debtor.

(b) The department may refund or credit any amount left after the applications under par. (a), upon submission of a claim for a refund or credit and satisfactory proof of the claim, to the person entitled to that amount.

(8) RELEASE OF LEVY. The department may release the levy upon all or part of property levied upon to facilitate the collection prudently pursuant to a pension or retirement program, rents, proceeds of insurance and amounts paid pursuant to a contract.
of the liability or to grant relief from a wrongful levy, but that release does not prevent any later levy.

(9) WRONGFUL LEVY. If the department determines that property has been wrongfully levied upon, the department may return the property at any time, or may return an amount of money equal to the amount of money levied upon.

(10) PRESERVATION OF REMEDIES. The availability of the remedy under this section does not abridge the right of the department to pursue other remedies.

(11) EVASION. Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized under this section with intent to evade or defeat the assessment or collection of any debt is guilty of a Class I felony and shall be liable to the state for the costs of process and prosecution.

(12) NOTICE BEFORE LEVY. If no proceeding for review permitted by law is pending, the department shall make a demand to the debtor for payment of the debt which is subject to levy and give notice that the department may pursue legal action for collection of the debt against the debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service which requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including costs and fees, and the name of the debtor who is liable for the debt. The debtor’s failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year after the date of service of the original levy.

(13) SERVICE OF LEVY. (a) The department shall serve the levy upon the debtor and 3rd party by personal service or by any type of mail service which requires a signature of acceptance.

(b) Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the debtor or 3rd party personally; by leaving a copy of the levy at the debtor’s dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment of the debtor with an officer or employee of the debtor; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

(c) The department representative who serves the levy shall certify service of process on the notice of levy form and the person served shall acknowledge receipt of the certification by signing and dating it. If service is made by mail, the return receipt is the certificate of service of the levy.

(d) The failure of a debtor or 3rd party to accept or receive service of the levy does not invalidate the levy.

(14) ANSWER BY 3RD PARTY. Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or aids in removing, depositing or concealing any property upon which a levy is authorized under this section with intent to evade or defeat the assessment or collection of any debt that is guilty of a Class I felony and shall be liable to the state for the costs of process and prosecution.

(15) DURATION OF LEVY. A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied, until the levy is released or until one year after the date of service, whichever occurs first.

(16) RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY. No employer may discharge or otherwise discriminate with respect to the terms and conditions of employment against any employee by reason of the fact that his or her earnings have been subject to levy for any one levy or because of compliance with any provision of this section. Whoever willfully violates this subsection may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(17) REMOVAL FROM POSSESSION. (a) If a court imposes a fine or forfeiture under sub. (1) to (3), the court shall impose under ch. 814 an uninsured employer surcharge equal to 75 percent of the amount of the fine or forfeiture.

(b) If a fine or forfeiture is suspended in whole or in part, the uninsured employer surcharge shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the uninsured employer surcharge under this section. If the deposit is forfeited, the amount of the uninsured employer surcharge shall be transmitted to the secretary of administration under par. (d). If the deposit is returned, the uninsured employer surcharge shall also be returned.

(18) HEARING. Any debtor who is subject to a levy proceeding made by the department may request a hearing under s. 102.17 to review the levy proceeding. The hearing is limited to questions of prior payment of the debt that the department is proceeding against, and mistaken identity of the debtor. The levy is not stayed pending the hearing in any case in which property is secured through the levy.

(19) COST OF LEVY. Any 3rd party is entitled to a levy fee of $5 for each levy in any case where property is secured through the levy. The 3rd party shall deduct the fee from the proceeds of the levy.

(20) Preference of required payments. Subject to the federal bankruptcy laws, in the event of an uninsured employer’s dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the uninsured employer under s. 102.82 shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages.
The county treasurer in cases where a deposit is made, any forfeitures, surcharges, fees, and costs imposed under ch. 814 shall be taken out of the deposit and the balance, if any, returned to the employer.

(b) In addition to any monetary penalties, the court may order an employer to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest, including ceasing business operations.

(c) All civil remedies are available in order to enforce the judgment of the court, including the power of contempt under ch. 785.

102.87 Citation procedure. (1) (a) The citation procedures established by this section shall be used only in an action to recover a forfeiture under s. 102.85 (1) or (2). The citation form provided by this section may serve as the initial pleading for the action and is adequate process to give a court jurisdiction over the person if the citation is filed with the circuit court.

(b) The citation may be served on the defendant by registered mail with a return receipt requested.

(2) A citation under this section shall be signed by a department deputy, or by an officer who has authority to make arrests for the violation, and shall contain substantially the following information:

(a) The name, address and date of birth of the defendant.

(b) The name and department of the issuing department deputy or officer.

(c) The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the statute or rule violated and a designation of the violation in language which can be readily understood by a person making a reasonable effort to do so.

(d) A date, time and place for the court appearance, and a notice to appear.

(e) The maximum forfeiture, plus costs, fees, and surcharges imposed under ch. 814, for which the defendant is liable.

(f) Provisions for deposit and stipulation in lieu of a court appearance.

(g) Notice that if the defendant makes a deposit and fails to appear in court at the time specified in the citation, the failure to appear will be considered tender of a plea of no contest and submission to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and plea, may decide to summon the defendant or may issue an arrest warrant for the defendant upon failure to respond to a summons, and that the defendant may, at any time before or at the time of the court appearance date, move the court for relief from the effect of the stipulation.

(i) Notice that the defendant may, by mail before the court appearance, enter a plea of not guilty and request another date for a court appearance.

(j) Notice that if the defendant does not make a deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or an arrest warrant.

(3) A defendant issued a citation under this section may deposit the amount of money that the issuing department deputy or officer directs by mailing or delivering the deposit and a copy of the citation before the court appearance date to the clerk of the circuit court in the county where the violation occurred, to the department, or to the sheriff’s office or police headquarters of the officer who issued the citation. The basic amount of the deposit shall be determined under a deposit schedule established by the judicial conference. The judicial conference shall annually review and revise the schedule. In addition to the basic amount determined by the schedule, the deposit shall include the costs, fees, and surcharges imposed under ch. 814.

4 A defendant may make a stipulation of no contest by submitting a deposit and a stipulation in the manner provided by sub. (3) before the court appearance date. The signed stipulation is a plea of no contest and submission to a forfeiture, plus the costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit.

Except as provided by sub. (6), a person receiving a deposit shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of the circuit court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time specified in the citation he or she shall be considered to have tendered a plea of no contest and submitted to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit and that the court may accept the plea. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, the canceled check is the receipt.

The person receiving a deposit and stipulation of no contest shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of the circuit court regarding the disposition of the deposit, and notifying the defendant that if the stipulation of no contest is accepted by the court the defendant will be considered to have submitted to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. Delivery of the receipt shall be made in the same manner as provided in sub. (5).

7 If a defendant issued a citation under this section fails to appear in court at the time specified in the citation or by subsequent postponement, the following procedure applies:

(a) If the defendant has not made a deposit, the court may issue a summons or an arrest warrant.

(b) If the defendant has made a deposit, the citation may serve as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant.

If the court accepts the plea of no contest, the defendant may, within 90 days after the date set for appearance, move to withdraw the plea of no contest, open the judgment, and enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to appear was due to mistake, inadvertence, surprise, or excusable neglect. If a defendant is relieved from the plea of no
contest, the court may order a written complaint or petition to be filed. If on reopening the defendant is found not guilty, the court shall delete the record of conviction and shall order the defendant’s deposit returned.

(c) If the defendant has made a deposit and stipulation of no contest, the citation serves as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons or an arrest warrant. After signing a stipulation of no contest, the defendant may, at any time before or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on the motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects of the stipulation.

(8) If a citation or summons is issued to a defendant under this section and he or she is unable to appear in court on the day specified, the defendant may enter a plea of not guilty by mailing a letter stating that inability to the judge at the address indicated on the citation. The letter must show the defendant’s return address. The letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge shall reply by letter to the defendant’s address setting a time and place for trial. The time shall be during normal business hours if so requested. The date of the trial shall be at least 10 days from the date on which the letter was mailed by the judge. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

(9) A department deputy or an officer who collects a forfeiture and costs, fees, and surcharges imposed under ch. 814 under this section shall pay the money to the county treasurer within 20 days after its receipt. If the department deputy or officer fails to make timely payment, the county treasurer may collect the payment from the department deputy or officer by an action in the treasurer’s name of office and upon the official bond of the department deputy or officer, with interest at the rate of 12 percent per year from the time when it should have been paid.


102.88 Penalties; repeaters. (1) When a person is convicted of any violation of this chapter or of any department rule or order, and it is alleged in the indictment, information or complaint, and proved or admitted on trial or ascertained by the court after conviction that the person was previously subjected to a fine or forfeiture within a period of 5 years under s. 102.85, the person may be fined not more than $2,000 or imprisoned for not more than 90 days or both.

(2) When any person is convicted and it is alleged in the indictment, information or complaint and proved or admitted on trial or ascertained by the court after conviction that such person had been before subjected to a fine or forfeiture 3 times within a period of 3 years under s. 102.85 and that those convictions remain of record and unreversed, the person may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 1989 a. 64; 1991 a. 85.

102.89 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter or of any department rule or order under this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person does any of the following:

(a) Directly commits the violation.

(b) Aids and abets the commission of the violation.

(c) Is a party to a conspiracy with another to commit the violation or advises, hires or counsels or otherwise procures another to commit it.

(3) No penalty for any violation of this chapter or rule or order of this chapter may be reduced or diminished by reason of this section.

History: 1989 a. 64.