CHAPTER 102

WORKER'S COMPENSATION

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

102.01 Definitions. (1) This chapter may be referred to as the “Worker’s Compensation Act” and allowances, recoveries and liabilities under this chapter constitute “Worker’s Compensation”.

(2) In this chapter:

(ad) “Administrator” means the administrator of the division of hearings and appeals in the department of administration.

(ae)”Commission” means the labor and industry review commission.

(age) “Commissioner” means a member of the commission.

(ah) “Department” means the department of workforce development.

(ar) “Division” means the division of hearings and appeals in the department of administration.

(bm) “General order” means such order as applies generally throughout the state to all persons, employments, places of employment or public buildings, or all persons, employments or places of employment or public buildings of a class under the jurisdiction of the department. All other orders of the department shall be considered special orders.

(c) “Injury” means mental or physical harm to an employee caused by accident or disease, and also means damage to or destruction of artificial members, dental appliances, teeth, hearing aids and eyeglasses, but, in the case of hearing aids or eyeglasses, only if such damage or destruction resulted from accident which also caused personal injury entitling the employee to compensation therefor either for disability or treatment.

(d) “Local governmental unit” means a political subdivision of this state; a special purpose district or taxing jurisdiction, as defined in s. 70.114 (1) (f), in this state; an instrumentality, corporation, combination, or subunit of any of the foregoing; or any other public or quasi–public corporation.

(dm) “Order” means any decision, rule, regulation, direction, requirement, or standard of the department or the division, or any other determination arrived at or decision made by the department or the division.

(e) “Primary compensation and death benefit” means compensation or indemnity for disability or death benefit, other than increased, double or treble compensation or death benefit.

(eg) “Religious sect” means a religious body of persons, or a division of a religious body of persons, who unite in holding certain special doctrines or opinions concerning religion that distinguish those persons from others holding the same general religious beliefs.

(enh) “Secretary” means the secretary of workforce development.

(f) “Temporary help agency” means an employer who places its employee with or leases its employees to another employer who controls the employee’s work activities and compensates the
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).

(jm) “Uninsured employer surcharge” means the surcharge under s. 102.85 (4).

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

History:


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

An intentionally injured, unexpected and unforeseen by the injured party, is an accident under sub. (2) (c). Jenson v. Employers Mutual Casualty Co., 161 Wis. 2d 626, 498 N.W.2d 191.

But see Peterson v. Arlington Hospitality Staffing, Inc., 2004 WI App 199, 276 Wis. 2d 746, 689 N.W.2d 61, 53−81.

Cessation of employment under sub. (2) (g) does not require that the employee no longer be employed, but requires that the employee no longer be employed in the employment that contributed to the disability. If that is the case, the employer that caused the injury is responsible. North River Insurance Co v. Manpower Temporary Services, 229 Wis. 2d 746, 585 N.W.2d 15 (Ct. App. 1997), 96−2000.

Sub. (2) (g) sets the date of injury of an occupational disease, and s. 102.42 (1) provides that medical expenses incurred before an employee 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.

Sub. (2) (g) 2. does not represent a comprehensive statement of a claimant’s burden of proof nor does it abrogate the requirement of s. 102.03 (1) (e) that the claimant must prove that the injury arose out of employment. It merely sets out a mechanism for fixing the time, occurrence, or date of an injury for purposes of identifying the proper employer against whom a claim may be made. White v. LIRC, 2000 WI App 244, 239 Wis. 2d 505, 620 N.W.2d 442, 00−0855.

In case of disease, the date of disability under sub. (2) (g) 2. was the date when the employee could no longer work, not when he first underwent an employer−required medical examination. Virginia Surety Co., Inc v. LIRC, 2002 WI App 277, 258 Wis. 2d 666, 655 N.W.2d 306, 02−0030.

A company in the business of loaning employees was not a “temporary help agency” under sub. (2) (f) when that company placed an employee with another employer. M.M. Schranz Roofing, Inc v. First Choice Temporary, Inc., 2002 WI App 277, 268 Wis. 2d 746, 2002 WI App 277.

Accordingly, the same considerations, standards, and rules of decision shall apply in all cases in determining whether any employee under this chapter, at the time of the injury, was performing service growing out of and incidental to the employee’s employment. For the purposes of this subsection no differentiation shall be made among any of the classes of employees enumerated in s. 102.04 or of employees enumerated in s. 102.07, and no statutes, ordinances, or administrative regulations otherwise applicable to any employees enumerated in s. 102.07 shall be controlling.

(d) Where the injury is not intentionally self−inflicted.

(e) Where the accident or disease causing injury arises out of the employee’s employment.

(f) Every employee whose employment requires the employee to travel shall be deemed to be performing service growing out of and incidental to the employee’s employment at all times while on a trip, except when engaged in a deviation for a private or personal purpose. Acts reasonably necessary for living or incidental thereto shall not be regarded as such a deviation. Any accident or disease arising out of a hazard of such service shall be deemed to arise out of the employee’s employment.

(g) Members of the state legislature are covered by this chapter when they are engaged in performing their duties as state legislators including:

1. While performing services growing out of and incidental to their function as legislators;

2. While performing their official duties as members of committees or other official bodies created by the legislature;

3. While traveling to and from the state capital to perform their duties as legislators; and

4. While traveling to and from any place to perform services growing out of and incidental to their function as legislators, regardless of where the trip originated, and including acts reasonably necessary for living but excluding any deviations for private or personal purposes except that acts reasonably necessary for living are not deviations.

(2) Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy
against the employer, any other employee of the same employer 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 employees whose rate of compensation is changed as provided in s. 102.43 (5) (c) or (7) or 102.44 (1) or (5) and employees who are eligible to receive private rehabilitative counseling and rehabilitative training under s. 102.61 (1m) and except as provided in s. 102.555 (12) (b).

(5) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of the employee’s death, his or her dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of the employee’s death resulting from such injury, the dependents of the employee, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following applies:

(a) His or her employment is principally localized in this state.

(b) He or she is working under a contract of hire made in this state in employment not principally localized in any state.

(c) He or she is working under a contract made in this state in employment principally localized in another state whose worker’s rate of compensation is changed as provided in compensation law is not applicable to that person’s employer.

(d) An injury claimed under par. (b) may be rebutted by specific evidence that the injury was caused by exposure to COVID–19 outside of the first responder’s work for the employer.


Committee Note, 1971: The Wisconsin Supreme Court in the case of Halama v. ILHR Department, 48 Wis. 2d 328 (1970), suggested that consideration be given to extending coverage to an employee who is injured while going to or returning from a direct route between two portions of the employer’s premises, i.e., parking lot and work premises. [Bill 371–A]

The holding in Brown, 9 Wis. 2d 555, that causation legally sufficient to support compensation does not require a showing of strain or exertion greater than that normally required by the employee’s work efforts, was not intended to preclude a doctor determining causation, from considering whether the employee was engaged in usual work at the time of injury. However, the doctor should not automatically conclude each time an employee is injured while performing a task previously performed on a regular basis that the injury was caused by the employee’s condition rather than employment. Pitsch v. ILHR, 47 Wis. 2d 55, 176 N.W.2d 390 (1970).

While a herniated disc was diagnosed within a few days after the claimed injury, the evidence did not justify the department’s finding that the employee did not meet the burden of proof. Erickson v. ILHR, 49 Wis. 2d 114, 181 N.W.2d 495 (1970).

The Department of Industry, Labor and Human Relations cannot divide liability for compensation among successive employers for the effects of successive injuries in the absence of evidence to sustain a finding that the disability arose from the successive injuries, nor can it assess all liability against one of several employers nor determine liability equally among several employers if there is no evidence to support a finding that the injury or injuries contributed to the disability in that manner. Semons Department Store v. ILHR, 50 Wis. 2d 518, 184 N.W.2d 871 (1971).

While susceptibility to further injury does not necessarily establish a permanent disability under the “is” doctrine, an employee’s predisposition to injury does not relieve a present employer from liability if the employee becomes injured due to the employment even though the injury may not have caused disability in another person. Semons Department Store v. ILHR, 50 Wis. 2d 518, 184 N.W.2d 871 (1971).

A salesperson on a trip who deviated to the extent of spending several hours in a tavern before being killed on his ordinary route home may have been in the course of employment, in which case his death would be entitled to compensation. Lager v. ILHR, 50 Wis. 2d 651, 185 N.W.2d 300 (1971).

A wife cannot assert a separate and independent cause of action against her husband’s employer for loss of consortium due to injuries sustained by the husband in an industrial accident covered by this chapter. Rosencrans v. Wisconsin Telephone Co., 54 Wis. 2d 124, 194 N.W.2d 643 (1972).

While the commissioner finding that the deceased was performing services when killed while walking on a Milwaukee street at 3 a.m. while intoxicated was sustained. Phillips v. ILHR, 56 Wis. 2d 569, 202 N.W.2d 249 (1972).

Members of a partnership are employers of the partners. An employee 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).

A salesperson, employed on a part-salary and part-commission basis, who traveled each day from his home, servicing and soliciting orders within a prescribed territory, on a delivery truck furnished by his employer whose office he was not required to report to, was performing services incidental to employment when he fell on his icy driveway going to his delivery truck to leave for his first call. Black River Distributors, Inc. v. ILHR, 58 Wis. 2d 357, 207 N.W.2d 83 (1973).

Since the decedent’s employment status for services rendered in this state was substantial and not transitory, and the relationship was not interrupted by cessation of work for the Wisconsin employer, the department erred in not finding in the absence of evidence on the employer’s conflicting testimony that during the year in which the employee met his death his working time in Wisconsin had been reduced to 10 percent. Simons v. ILHR, 62 Wis. 2d 172, 214 N.W.2d 314 (1973).

Under sub. (1) (f), no purpose of the employer was served by an extended deviation to test road conditions in bad weather to determine if a boyfriend or going on a hunting trip the next day would be feasible, nor was it a reasonably necessary for living or incidental thereto. Hunter v. ILHR, 64 Wis. 2d 97, 218 N.W.2d 314 (1974).

Under the four-element test for deciding whether a worker was a loaned or special employee, the 1st element, actual or implied consent to work for the special employer, was negated by the existence of a work order providing that the plaintiff would not be employed by the special employer for a period of 90 days, and by the absence of any evidence indicating consent, the plaintiff was not an employee at the time of the accident. Nelson v. L. & J. Press Corp., 65 Wis. 2d 770, 225 N.W.2d 607 (1974).

Nontraumatically caused mental injury is compensable only if it results from a situation of greater dimensions than the day-to-day mental stresses and tensions that all employees must experience. Swiss Colony, Inc. v. ILHR, 72 Wis. 2d 46, 240 N.W.2d 28 (1976).

A provider of medical services to an employee did not have a cause of action under the worker’s compensation act against the employer when the employer denied liabl-
ity and compromised an employer’s claim. La Crosse Lutheran Hospital v. Oldenburg, 73 Wis. 2d 146, 114 N.W.2d 875 (1962).

The doctrines of required travel, dual purpose, personal comfort, and special mis- sion apply if employee was authorized by DILHR, 82 N.W.2d 294, 262 N.W.2d 810 (1977).

The personal comfort doctrine did not apply to an employee while going to lunch off the employer’s premises and not during specific working hours; a denial of ben- efit was affirmed. Pitsch v. MIE, 172 Wis. 2d 299, 494 N.W.2d 827 (1993).

The exclusionary doctrine for negligence in maintaining the leased premises. Couillard v. Wisconsin Electric Power Co. v. LIRC, 109 Wis. 2d 240, 369 N.W.2d 87 (1985).

The presumption in favor of traveling employees does not modify the requirements for employer liability. Goranson v. DILHR, 94 Wis. 2d 537, 289 N.W.2d 270 (1980).

The personal comfort doctrine did not apply to an employee while cutting his hair at a barber shop off of the employer's premises and not during specific working hours; a denial of ben- efit was affirmed. Nigbor v. DILHR, 199 Wis. 2d 590, 292 N.W.2d 622 (1980).

Sub. (2) is constitutional. Oliver v. Travelers Insurance Co., 96 Wis. 2d 345, 292 N.W.2d 481 (1980).

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Use of the parking lot is a prerequisite for coverage under sub. (1) (c). Kriens v. Kretschmann, 96 Wis. 2d 196, 292 N.W.2d 622 (1980).

The provision by an employer of alleged negligent medical care to an employee injured while the job person injured by the occupational injury, when he left the workplace to seek medical care. Cohn v. Apogee, Inc., 219 Wis. 2d 564, 559 N.W.2d 856 (1997).

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Under sub. (2), recovery of compensation is the exclusive remedy against a worker’s compensation carrier and the carrier’s agents. Walstrom v. Gallagher Bassett Serv-
ices, Inc., 2000 WI App 247, 239 Wis. 2d 473, 620 N.W.2d 223, 06−1334.

The fact that an employee’s multiple duties at a tavern were irrelevant when the employee was injured while engaged in a later activity reasonably nec-
 essary to living. Under s. 102.38, intoxication does not defeat a worker’s compensa-
tion for the injuries that were the subject of the worker’s compensation claim. Jenson
v. We R. & B. Inc., 313 Wis. 2d 784, 692 N.W.2d 129, 06−1285.

Under the private errand doctrine, if a person in authority over the employee asks the employee to perform a service for the personal benefit of the employer, the
employee’s superior and the employee is injured while performing the task, the injury
grew out of and was incidental to employment unless the request is clearly unau-
thorized. Under s. 102.01, 240 Wis. 2d 458, 631 N.W.2d 385. UTMA Mutual Insurance Co. v. Larsen,
2001 WI 30, 242 Wis. 2d 47, 624 N.W.2d 129, 98−3577.

When one company was the injured employee’s employer on the date of the injury,
but the other company was contracted to become the employee’s employer retroac-
tive to a date prior to the injury, the former and its insurer were the responsible for providing benefits under this chapter. Epic Staffing, Inc. v. LIRC,
2003 WI App 134, 266 Wis. 2d 253, 625 N.W.2d 906, 02−1249.

Under the last exception in sub. (2), an employee who receives worker’s compensa-
tion benefits may also file suit against a coemployee when an employee is acting in
the capacity of a collective bargaining agreement or an ordinance exists. Keller v. Kraft,
2003 WI App 212, 267 Wis. 2d 444, 671 N.W.2d 361, 02−3377.

A sole proprietor or partner, hire, training, and supervision against an employee for inju-
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d. 2d 746, 689 N.W.2d 61, 03−2811.

The holding in Lentz, 195 Wis. 2d 457 (Ct. App. 1995), that sexual harassment is not an accident subject to the exclusivity provision of sub. (2), is inapplicable when a coemployee has committed the intentional tort. Lentz, therefore, must be limited to the situation when a sole proprietor and his intentionally caused the sexual
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322, 04−1039.

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strates that the injury occurred while the employee was acting in the course of
d. 2d 746, 689 N.W.2d 61, 03−2811.
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 pars. (a) to (d) are not applicable, who has any person in service under any contract of hire, express or implied, oral or 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 shall not, prior to such accident, have effected 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 only of the employer for whom the service is being performed.

(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 only of the employer for whom the service is being performed.

(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 arboreicultural 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 use of labor, services or the exchange of use of equipment with 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 employer 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, 2d 361, 173 N.W.2d 192 (1970).

A franchisee’s worker’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 act is applicable. Therefore, a coemployee has no liability for the employee’s death and the coemployee’s insurers were properly dismissed from the case. Estate of Torres v. Empire Fire and Marine Insurance Company, 2008 WI App 113, 313 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 205, 792 N.W.2d 584, 09–1845.

Using dictionary definitions of “usually” in sub. (1) (b) 1., 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. 2009 WI App 58, 371 Wis. 2d 548, 855 N.W.2d 150, 14–2143.

Under sub. (2m), the employee’s “employer” was the temporary help agency that the defendant compensated for the employee’s services. The exclusive remedy provision under s. 102.03 (2) therefore prohibited the employee’s estate from bringing tort claims against the temporary help agency but did not prohibit the estate from pursuing tort claims against the defendant and its insurer. Ehr v. West Bend Mutual Insurance Company, 2018 WI App 14, 380 Wis. 2d 138, 908 N.W.2d 486, 17–0142.

102.05 Election by employer, withdrawal. (1) An employer who has had no employee at any time within a continuous period of 2 years shall be deemed to have effected withdrawal, which shall be effective on the last day of such period. An employer who has not usually employed 5 employees or more on any day during any calendar quarter in a calendar year may file a withdrawal notice with the department, which withdrawal shall take effect 30 days after the date of such filing or at such later date as is specified in the notice. If an employer who is subject to this chapter only because the employer elected to become subject to this chapter under sub. (2) cancels or terminates his or her contract for the insurance of compensation under this chapter, that employer is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

(2) Any employer who shall enter into a contract for the insurance of compensation, or against liability therefor, shall be deemed thereby to have elected to accept the provisions of this chapter, and such election shall include farm laborers, domestic servants and employees not in the course of a trade, business, profession or occupation of the employer if such intent is shown by the terms of the policy. Such election shall remain in force until withdrawn in the manner provided in sub. (1).

(3) Any person engaged in farming who has become subject to this chapter may withdraw by filing with the department a notice of withdrawal, if the person has not previously elected to become an employee as defined by s. 102.07 (5) on 20 or more days during the current or previous calendar year. Such withdrawal shall be effective 30 days after the date of receipt by the department, or at such later date as is specified in the notice. Such person may again become subject to this chapter as provided by s. 102.04 (1) (c) and (e).

History: 1983 a. 98 s. 31; 1993 a. 81, 492; 1999 a. 14.

An injured worker who never had individuals in his service as employees and did not otherwise fulfill the statutory definition of an employer was not an employer, because he had parceled out a worker’s compensation policy. Lloyd Frank Logging v. Healy, 2007 WI App 249, 306 Wis. 2d 385, 742 N.W.2d 337, 07–0692.

102.06 Joint liability of employer and contractor.

An employer shall be liable for compensation to an employee of a contractor or subcontractor under the employer who is not subject to this chapter, or who has not complied with the conditions of s.
102.07 Employee defined. “Employee” as used in this chapter means:

1. (a) 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. The state and any local governmental unit may require a bond from a contractor to protect the state or unit against compensation to employees of the contractor or to employees of a subcontractor under the contractor. This paragraph does not apply beginning 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 section 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 does not apply beginning 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 section does apply to claims for compensation filed on or after the date specified in that certificate.

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 employees 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 deemed 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 descendants, 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 descendants.

(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, provider 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 emergency 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 considered an employee of the state for purposes of this chapter as provided in s. 257.03.

(a) Except as provided in pars. (b) and (bm), every independent contractor is, for the purpose of this chapter, an employee of any employer under this chapter for whom he or she is perform-
(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 business or self-employment income tax returns with the federal internal 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 independent 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 failure 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 perform work or service.

8. Has continuing or recurring business liabilities or obligations.

9. The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures.

(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 broker 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.

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.

(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 insur-
ticular 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. 46.28997 (1), for a person receiving long-term care benefits under s. 46.2854 or under any children’s long-term care 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.

There was no employment when a member of an organization borrowed a refrigerated truck from a packing company for use at a picnic and was injured while returning it. Kreis Packing Co. v. Kottwitz, 61 Wis. 2d 175, 212 N.W.2d 97 (1973).

Nothing in this chapter precludes an employer from agreeing with employees to continue salaries for injured workers in excess of worker’s compensation benefits. Acuity Mutual Insurance Company v. Olivas, 526 N.W.2d 203, 205 (Wis. 1995).

(2) A person who has been issued 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.

History: 1983 a. 98; 1993 a. 112.

102.076 Election by corporate officer. (1) Not more than 2 officers of a corporation having not 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 policy period 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 its policy of worker’s compensation insurance or, 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 district, 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.

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102.078  WORKER'S COMPENSATION

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 agencies 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 department of workforce development shall monitor the delivery of benefits 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. 102.11, 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 $543, 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 fire fighter, 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.

(1)  In 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 as 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 have earned 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) (e). Thuer v. LIRC, 2001 WI 26, 242 Wis. 2d 29, 624 N.W.2d 110, 100–1008.

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 postmasters 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 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 make the actual recording of the statement available as an exhibit at a hearing on the claim. If the insurer or self-insured employer fails to provide a copy of the statement to the employee 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 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, insurance corporation, 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 report 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 examina-
tions 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.

(3m) When compensation is claimed for loss of earning capacity under s. 102.44 (2) or (3), the employee shall, on the written request of the employee’s employer or insurer, submit to reasonable examinations by vocational experts provided and paid for by the employer or insurer.

(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:

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 those 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, advanced practice nurse prescriber, or 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.

(d) Subject to par. (e):

1. Any physician, chiropractor, psychologist, dentist, podiatrist, 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.

2. Notwithstanding any statutory provisions except par. (e), 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.

3. Notwithstanding any statutory provisions except par. (e), 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, 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 any health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) in paper format upon payment of the actual costs of preparing 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).

(c) 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 hernia, 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 $75.
$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 indemnity 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 adverse 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: 1973 c. 147 s. 54; 1979 c. 276; 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 chs. DWD 80 and HA 4, 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 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.

(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 reasonableness 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 under sub. (2) as to the reasonableness 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 reasonableness 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. (2) on the reasonableness 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).

that a health service fee is being disputed, a health service provider may not submit a dispute. The department or the division shall deny payment of a prescription drug charge, unless that determination is set aside on judicial review as provided in par. (f).

(2) (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 reasonableness of a fee charged by the health service provider for services provided to an injured employee who claims benefits under this chapter. A health service provider may not submit a fee dispute to the department under this subsection before all treatment by the health service provider of the employee’s injury has ended if the 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 provider of an employee’s injury has ended, the health service provider 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.

(2m) (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 provider 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, the 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 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) are applicable, 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).

(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 service 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 procedure at issue, the department may use any other information that the department considers to be reliable and relevant to the disputed 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 department 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 determination for any reason that the department considers sufficient. Within 60 days after a determination under this subsection, the

Updated 2017–18 Wis. Act 186 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on June 19, 2020. Published and certified under s. 35.18. Changes effective after June 19, 2020, are designated by NOTES. (Published 6–19–20)
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 resolution process under this subsection.

(h) The department shall promulgate rules establishing procedures and requirements for the fee dispute resolution process under this subsection, including rules specifying the standards that health service fee databases must meet for certification under this paragraph. Using those standards, the department shall certify 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.

Cross−reference: See also s. DWD 80.72, Wis. adm. code.

(2m) (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, the department and the division 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 under this subsection before all treatment by the health service provider of the employee’s injury has ended if the amount in controversy, whether based on a single charge or a combination of charges for more days of service, is less than $25. After all treatment by a health service provider of an employee’s injury has ended, the health service provider may submit any dispute over necessity of treatment to the department, regardless of the amount in controversy. The department shall deny payment for any treatment 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. that the necessity of 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, the department shall obtain a written opinion on the necessity of the treatment in dispute from an expert selected by the department. To qualify as an expert, a person must be licensed to practice the same health care profession as the individual health service provider whose treatment is under review and must either be performing services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The standards promulgated under par. (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 shall adopt 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 under par. (c). The department shall charge the insurer or self−insured employer for the full cost of obtaining the written opinion of the expert for the first dispute that a particular individual health service provider is involved in, 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 under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.

(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 (4) and the council on worker’s compensation on amending those rules.

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 under any arrangement made in violation of sub. (3) 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.

The continuing obligation to compensate an employee for work related medical expenses under s. 102.42 does not allow agencies to sever or curtail any benefit after the one-year statute of limitations in s. 102.16 (1) has run if the employee incurs medical expenses after that time. Schenski v. LIRC, 203 Wis. 2d 109, 552 N.W.2d 120, 126 (Ct. App. 1996), 96−06051.

An appeal under sub. (2m) (c) (6) of a department determination may be served under s. 102.23 (1) (b) on the department or the commission. McDonough v. DWD, 227 Wis. 2d 273, 595 N.W.2d 486 (1999), 97−3711.

The Department of Workforce Development does not possess authority to independently determine, for worker’s compensation purposes, the reasonableness and medical necessity of a protectively−placed injured employee’s court−ordered transfer to the least restrictive environment under ch. 55. The department’s authority 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 an employee receives within a placement, but not the placement itself. LaBeree v. Wausau Insurance Companies, 2010 WI App 148, 330 Wis. 2d 101, 793 N.W.2d 77, 69−1628.

102.16 Worker’s compensation

Procedure; notice of hearing; witnesses, contempt; testimony, medical examination. (1) (a) 1. Upon the filing with the department by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the department shall mail a copy of the application to all other parties in interest, and the insurance carrier shall be considered a party in interest. The department or the division may bring in additional parties by service of a copy of the application.

2. Subject to subd. 3., the division shall cause notice of hearing on the application to be given to each interested party by service of that notice on the interested party personally or by mailing a copy of that notice to the interested party’s last−known address at least 10 days before the hearing. If a party in interest is located without this state, and has no post−office address within this state, the copy of the application and copies of all notices shall be filed with the department of financial institutions and shall also be sent by registered or certified mail to the last−known post−office address of the party. Such filing and mailing shall constitute sufficient service, with the same effect as if served upon a party located within this state.

3. If a party in interest claims that the employer or insurer has acted with malice or bad faith as described in s. 102.18 (1) (b) 3. 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 statute of the other state, of the District of Columbia, or of any territory of the United States, with the testimony and proceedings at any 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.

102.17 Procedure; notice of hearing; witnesses, contempt; testimony, medical examination. (1) (a) 1. Upon the filing with the department by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the department shall mail a copy of the application to all other parties in interest, and the insurance carrier shall be considered a party in interest. The department or the division may bring in additional parties by service of a copy of the application.

2. Subject to subd. 3., the division shall cause notice of hearing on the application to be given to each interested party by service of that notice on the interested party personally or by mailing a copy of that notice to the interested party’s last−known address at least 10 days before the hearing. If a party in interest is located without this state, and has no post−office address within this state, the copy of the application and copies of all notices shall be filed with the department of financial institutions and shall also be sent by registered or certified mail to the last−known post−office address of the party. Such filing and mailing shall constitute sufficient service, with the same effect as if served upon a party located within this state.

3. If a party in interest claims that the employer or insurer has acted with malice or bad faith as described in s. 102.18 (1) (b) 3. 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 statute of the other state, of the District of Columbia, or of any territory of the United States, with the testimony and proceedings at any 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.
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 patriarchy or child support proceedings, as provided in s. 69.209.  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.

3.  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 is liable for delinquent contributions, the department shall reinstate the license or approve the application, unless there are other grounds for revocation or denial.  The department may not charge fees for reinstatement of a license under this subdivision.

4.  A member of the legislature, if any, of 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.

(c)  Whenever the testimony presented at any hearing indicates a dispute or creates a doubt as to the extent or cause of disability, the department of workforce development shall notify 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 patriarchy or child support proceedings, as provided in s. 69.209.  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.

2.  In the case of a dispute or creates a doubt as to the extent or cause of disability, the department shall notify 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 patriarchy or child support proceedings, as provided in s. 69.209.  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.

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.

(a) 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 payrolls of the employer to be examined, by any examiner, and may direct the 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.

(b) 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, of 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.

(c)  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 with 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.

(d) The contents of certified medical and surgical reports and of statements made 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. 102.44 (2) and (3), 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.
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 para-
thograph 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, in so far as applicable, to a proceeding under this subsection.
When the division schedules a hearing on its own motion, the divi-
sion 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 of 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 form provided by the division and shall give the name and
address of the party requesting the subpoena.

(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
gerect 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), during the period of the right of an employee, the em-
ployee’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; 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 par-
tial knee or hip replacement, there shall be no statute of limi-
tations, except that benefits or treatment expense for an occupa-
tional 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 supplement-
ental 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 pay-
ment 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 con-
sidered payment of compensation for the purpose of this section
if the employer 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 personal representative, or surviv-
ing 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 appli-
cable 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 wit-
tesses 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 wit-
tesses 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 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 not admit into 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.

History: 1971 c. 148; 1971 c. 213 s. 5; 1973 c. 150, 282; Sup. Ct. Clr., 67 Wis. 2d 585, 774 (19); 1975 c. 147 ss. 20, 54; 1975 c. 199; 2000 c. 197 c. 28, 195, 273;
a. 180, 206; 2011 a. 183; 2013 a. 36; 2015 a. 55, 180; s. 35.17 correction in (1) (d)
2.

Cross-reference: See also ch. DWD 80, Wis. adm. code.
A plaintiff−employer was not deprived of any substantial due process rights by the department’s refusal to invoke its rule requiring inspection of the opposing parties’ medical reports when the plaintiff had ample notice of the nature of the employee’s claims. American Cyanamid Co. v. DILHR, 65 N.W.2d 660 (Wis. 1954).

Under the facts of the case, a refusal to grant an employer’s request for adjournment was a denial of due process. Bitumount Casualty Co. v. DILHR, 97 Wis. 2d 730, 295 N.W.2d 183 (Ct. App. 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 evidence. Conradt v. Mt. Carmel School, 197 Wis. 2d 60, 559 N.W.2d 713 (Ct. App. 1995), 94−2842.

LIRC’s authority under sub. (1) (a) to control its calendar and manage its internal affairs sufficiently applies 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. 102.425 (1) (a). Baldwin v. LIRC, 225 Wis. 2d 601, 599 N.W.2d 8 (Ct. App. 1999), 98−3090.

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, 234 Wis. 2d 203, 610 N.W.2d 122, 99−1183.

It was reasonable for LIRC to conclude that the statute of limitations under subsection (4) for death benefits begins to run at the time of death, rather than the time of injury. International Paper Co. v. LIRC, 2001 WI App 248, 248 Wis. 2d 348, 635 N.W.2d 823, 01−0126.

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 created a general term “subpoena.” Because it did not specify the right to cross−examine, it appears the legislature left to the department’s discretion whether to allow cross−examination in circumstances where it might provide relevant and probative evidence. Unless sub. (1) (d) (g) provides experts that have been presented by a party to the proceeding, it is a prima facie case, not experts appointed by the department to provide an impartial report, that LIRC did not violate the plaintiff’s due process rights when it declined to remand for cross−examination. Aurora Consolidated Health Care v. Labor and Industry Review Commission, 2012 WI 49, 340 Wis. 2d 367, 814 N.W.2d 824, 10−0258.


102.175 Apportionment of liability. (1) If it is established in the hearing that 2 or more accidental injuries, for each of which a party to the proceedings is liable under this chapter, have each contributed to a physical or mental condition for which benefits would be otherwise due, such benefits shall be apportioned according to the proof of the relative contribution to disability resulting from the injury.

(2) If after a hearing or a prehearing conference the division determines that an injured employee is entitled to compensation but that there remains in dispute only the issue of which of 2 or more parties is liable for that compensation, the division may order one or more parties to pay compensation in an amount, time, and manner as determined by the division. If the division finds under par. (1) (d) (g) that another party is liable for compensation, the division shall order that other party to reimburse any party that was ordered to pay compensation under this subsection.

(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 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. relative to use of 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.

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 award 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) (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 dispens-
ing 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 overpayment of s. 628.46 (1), the division may, upon 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 constitute 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 made 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. If the party does not file 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 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 on the order within 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, upon 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, in fact if 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 division 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 regarding disability or otherwise as 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 absolute discretion to reopen final orders on the basis of new or newly discovered evidence within a period of one year from the date of such order where this is found to be just. It is intended that the commission have authority to grant or deny compensation, 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. Worsch v. DLHR, 46 Wis. 2d 504, 173 N.W.2d 201 (1970).
When the department reverses an examiner’s findings and makes independent 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. A document so limited to the record before the hearing examiner is not available for a claim that LIRC failed to act within the statutory time limitations (sub. (5)) unless the party can show the lack of a reasonable basis for denying the claim. Because sub. (5) does not govern the application of the department’s findings and does not impose any penalty on the department or its agent for bad faith conduct in administering the uninsured employers fund, the examining examiner’s bad faith conduct is not subject to judicial review unless an alternative basis of liability (sub. (1) (bp)) does not govern the department’s finding or the department does not apply to the department’s agent, it does not provide an exclusive remedy for the aggrieved party in a bad faith claim. Accordingly, both the department’s and the court’s findings are relevant to the question of whether the claimant is entitled to a bad faith penalty.

In case an employee is adjudged mentally ill or incapacitated for performing work, any final decision on the claim must be made with the assistance of a duly accredited state organization or the department has the authority to appoint one. The findings of fact made by the court in this type of case are subject to the general rules pertaining to their claims for compensation. The receipt by the department of a request for an award of damages or other relief in an action against a person shall not be a binding upon the department in any such action. However, the department may not require a medical opinion absent something in the record to support the rejection; countervailing expert testimony is not required in all cases. The department may not issue a final decision on the claim until it has obtained a final decision from the circuit court.

In case an employee is adjudged mentally ill or incapacitated for performing work, the department has the authority to appoint a duly accredited state organization to represent such an employee in all matters pertaining to such employee’s claim for compensation. If the Department of Labor and Industry fails to act within the 30-day period prescribed by law, the claimant may file a petition for an administrative review by the department and the circuit court. Under s. 102.81 (1) (a) the department and its agents are not required to make specific findings as to a defense to a work-related claim for compensation. A general finding by the department implies all facts necessary to support it. A finding not explicitly made may be inferred from other properly made findings and the court may not disregard of the lack of a reasonable basis for denying the claim. The department is not required to make specific findings as to a defense to a work-related claim for compensation. A general finding by the department implies all facts necessary to support it. A finding not explicitly made may be inferred from other properly made findings and the court may not disregard of the lack of a reasonable basis for denying the claim.
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.


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, 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 auditing, allowing, 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, the penalties and interest assessed under this section apply to the employer for any finance charges, collection charges, or interest 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. 195; 1979 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 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 subd. 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 provided 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 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:
WORKER’S COMPENSATION


102.25

Under sub. (1) (a), judicial review is available only from an order or award granting or denying compensation. Judicial review by common law certiorari was not available for a claim that LIRC failed to act within the statutory time limitations under s. 102.16 (6) (a), which would be subject to judicial review of any subsequent order awarding or denying compensation in that case. Vidal v. Labor and Industry Review Commission, 2002 WI 72, 253 Wis. 2d 426, 645 N.W.2d 870, 00–3348.

The plaintiff complied with the requirement to name a defendant by naming the defendant’s insurer in the caption of the summons and complaint, which were timely filed and served even though the insurer was not made a defendant. Columbus Hospital, 2002 WI App 99, 253 Wis. 2d 553, 644 N.W.2d 690, 01–2346.

Sub. (5) requires an employer to make payment to a disabled employee pending appeal of a date of injury defense in an occupational disease case when the order or award is not appealed. Selaiden v. Columbia Hospital, 2002 WI App 99, 253 Wis. 2d 553, 644 N.W.2d 690, 01–2346.

102.24

Remanding record. (1) Upon the setting aside of any order or award, the court may remit the controversy and remand the record in the case to the commission for further hearing or proceedings, or it may enter the proper judgment upon the findings of the commission, as the nature of the case shall demand.

An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk of circuit court upon the judgment and lien docket entry of any judgment which may have been rendered upon the order or award. Transcription of the abstract may be made for the purpose of preventing inconvenience or hardship to parties involved in the action. The stipulation of the parties is not required prior to the filing of the action. Department of Workforce Development v. Labor and Industry Review Commission, 2015 WI App 56, 364 Wis. 2d 514, 869 N.W.2d 163, 14–2221.

The venue provision of sub. (1) (a) is central to the statutory scheme, and as such, fails to comply with its mandates depriving the circuit court of the right to hear the cases. DWD v. LIRC, 2016 WI App 21, 367 Wis. 2d 609, 877 N.W.2d 620, 14–2928.


102.25

Appeal from judgment on award. (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal the judgment within the period specified in s. 808.04 (1). A trial court may not require the commission or any party to the action to execute, serve, or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the record of the stenographic reporter or the tape of the recording machine.

2017–18 Wisconsin Statutes updated through 2019 Wis. Acts 186 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on June 19, 2020. Published and certified under s. 35.18. Changes effective after June 19, 2020, are designated by NOTES. (Published 6–19–20)
The state is a party aggrieved under this subsection if a judgment is entered upon the review confirming any order or award against the state. At any time before the case is set down for hearing in the court of appeals or the supreme court, the parties may have the record remanded by the court to the department or the division in the same manner and for the same purposes as provided for remanding from the circuit court to the department or the division under s. 102.24 (2).

(2) It shall be the duty of the clerk of any court rendering a decision affecting an award of the commission to promptly furnish the commission with a copy of such decision without charge.


Judicial Council Note, 1983: Sub. (1) is amended to replace the appeal deadline of 30 days after service of notice of entry of judgment or award by the standard time specified in s. 808.04 (1), stats., for greater uniformity. The subsection is further amended to eliminate the superfluous provisions for calendaring and hearing the appeal. [Bill 151-5]

A court order setting aside an administrative order and remanding the case to the administrative agency disposed of the entire matter in litigation and was appealable as of right. Beems v. DILHR, 102 Wis. 2d 70, 306 N.W.2d 22 (1983).

102.26 Fees and costs. (1) No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and certified transcripts of judgments. In proceedings to review an order or award, costs as between the parties shall be in the discretion of the court, but no costs may be taxed against the commission.

(2) Unless previously authorized by the department or the division, no fee may be charged for the enforcement or collection of any claim for compensation nor may any contract for that enforcement or collection be enforceable when that fee, inclusive of all taxable attorney fees paid or agreed to be paid for that enforcement or collection, exceeds 20 percent of the amount at which the claim is compromised or of the amount awarded, adjudged, or collected, except that in cases of admitted liability in which there is no dispute as to the amount of compensation due and in which the hearing or appeal is unnecessary, the fee charged may not exceed 10 percent, but not to exceed $250, of the amount at which the claim is compromised or of the amount awarded, adjudged, or collected. The limitation as to fees shall apply to the combined charges of attorneys, solicitors, representatives, and adjusters who knowingly combine their efforts toward the enforcement or collection of any compensation claim.

(3) (a) Except as provided in par. (b), compensation exceeding $100 in favor of any claimant shall be made payable to and delivered directly to the claimant in person.

(b) 1. Subject to sub. (2), upon application of any interested party, the department or the division may fix the fee of the claimant’s attorney or representative and provide in the award for that fee to be paid directly to the attorney or representative.

2. At the request of the claimant the 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.


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 under this chapter and if the governmental unit has given the parties to the claim written notice stating that the governmental unit provided public assistance and the cost of that assistance, and 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.


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 diseases suffered by employees, 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

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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 subds. 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.

c. 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. (a), 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. (bm), 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 exemption 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 ss. 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, retirement or any other benefit, 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 members of the religious sect to which the employee belongs with the benefits described in subd. 1., and the affidavit described in subd. 2., and the agreement described in subd. 4.

4. An agreement signed by an authorized representative of the religious sect to which the employee belongs that the religious sect will provide the benefits described in subd. 1., and the affidavit described in subd. 2., and the agreement described in subd. 4.

The department shall approve an application under par. (a) if the department determines that all of the following conditions are satisfied:

1. The employer has waived all compensation under this chapter other than the alternative benefits provided under par. (c).
2. The employee is a member of a religious sect whose established tenets or teachings oppose accepting the benefits of insurance as described in par. (a) 2. and that, as a result of adherence to those tenets or teachings, the employee conscientiously opposes accepting those benefits.

3. The religious sect to which the employee belongs has a long-established history of providing its members who become dependent on 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 agreed to provide the financial and medical assistance described in subd. 3. to the employee and to the dependents of the employee if the employee 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. (a) 2., who sustains an injury that, but for that waiver, the employer would be liable for under s. 102.03, who 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 dependent, 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 under subp. (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.

(4) CLOSURE ORDER. (a) When the department discovers an uninsured employer, the department may order the employer to cease operations until the employer complies with subp. (2).

(b) If the department believes that an employer may be an uninsured employer, the department shall notify the employer of the alleged violation of sub. (2) and the possibility of closure under this subsection. The employer may request and shall receive a hearing under s. 102.17 on the matter if the employer applies for a hearing within 10 days after the notice of the alleged violation is served.

(c) After a hearing under par. (b), or without a hearing if one is not requested, the division may issue an order to an employer to cease operations on a finding that the employer is an uninsured employer. If no hearing is requested, the department may issue such an order.

(d) The department of justice may bring an action in any court of competent jurisdiction for an injunction or other remedy to enforce an order to cease operations under par. (c).

(5) EMPLOYER’S LIABILITY. If compensation is awarded under this chapter, against any employer who at the time of the accident has not complied with sub. (2), such employer shall not be entitled as to such award or any judgment entered thereon, to any of the exemptions of property from seizure and sale on execution allowed in ss. 815.18 to 815.21. If such employer is a corporation, the officers and directors thereof shall be individually and jointly and severally liable for any portion of any such judgment as is returned unsatisfied after execution against the corporation.

(6) REPORTS BY EMPLOYER. Every employer shall upon request of the department report to it the number of employees and the nature of their work and also the name of the insurance company with whom the employer has insured liability under this chapter and the number and date of expiration of such policy. Failure to furnish such report within 10 days from the making of a request by certified mail shall constitute presumptive evidence that the delinquent employer is violating sub. (2).

(7) INSOLVENT EMPLOYERS; ASSESSMENTS. (a) If an employer with, currently or was formerly, exempted by written order of the department under sub. (2) (b) is unable to pay an award, judgment is rendered in accordance with s. 102.20 against that employer, and execution is levied and returned unsatisfied in whole or in part, payments for the employer’s liability shall be made from the fund established under sub. (8). If a currently or formerly exempted employer files for bankruptcy and not less than 60 days after that filing the department has reason to believe that compensation payments due are not being paid, the department in its discretion may make payment for the employer’s liability from the fund established under sub. (8). The secretary of administration shall proceed to recover those payments from the employer or the employer’s receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim for those payments. The attorney general shall appear on behalf of the secretary of administration in any such action or proceeding. All moneys recovered in any such action or proceeding shall be paid into the fund established under sub. (8).

(b) 1. Each employer exempted by written order of the department under sub. (2) (b) shall pay into the fund established by sub. (8) an initial assessment based on orders of the department as provided in subd. 2. An order of the department requiring exempt employers to pay into that fund shall provide for an amount that is sufficient to secure estimated payments of an insolvent exempt employer due for the period up to the date of the order and for one year following the date of the order and to pay the estimated cost of insurance carrier or insurance service organization services under par. (c). Payments ordered to be made to the fund shall be paid to the department within 30 days after the date of the order. If additional moneys are required, further assessments shall be made based on orders of the department as provided under subd. 2.

2. An initial or further assessment under subd. 1. shall be prorated 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 comparable 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 insurance 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).

(b) 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 nonlapsible fund designated as the self−insured employers liability fund. Moneys in the fund may be expended only as provided in s. 20.445 (1) (s) and may not be used for any other purpose of the state.


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 compliance with sub. (2) (a) is not sufficient. This provision does not violate due process. State v. Koch, 195 Wis. 2d 801, 537 N.W.2d 39 (Ct. App. 1995), 94−1230.

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 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 taking to locate that party. Every 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 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, under this chapter, 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 said 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 injury or death of deceased employee. 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 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.

(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 complainant 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 com-
pensating employer or the employee of the other 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 make 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.

(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 who provided 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 for compensation under this chapter may 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 and basic skills program who, under s. 49.193 (6) (a), 1997 stats., was considered to be an employee of the agency administering that program, or who, under s. 49.193 (6) (a), 1997 stats., was provided worker’s compensation coverage by the person administering the work experience component, and who makes 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 2, 1998.

(10) A practitioner who, under s. 257.03, is considered 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.

(11) No security officer employed by the department of military affairs who is deputed under s. 59.26 (4m), who remains an employee of the state for purposes of worker’s compensation coverage while conducting routine external security checks under state military installations in this state, and who has the right to make a claim for compensation under this chapter may make a claim or bring an action in tort against the county in which the security officer is conducting routine external security checks or against the sheriff or undersheriff who deputed the security officer.

(12) No individual who is an employee of an entity described in s. 102.07 (20) for purposes of this chapter who and 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) (g) who received the services from which the claim arose.

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 this section], safe place liability [now under s. 102.29 (9)] cannot be imposed on officers or employees of the employer. Their liability must be based on common law negligence. Pitrowski 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 employee 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 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 bringing of wrongful death and survival actions. Ortman v. Jensen & Johnson, Inc., 66 Wis. 2d 508, 225 N.W.2d 635 (1975).

The six-year limitation on 3rd-party actions for wrongful death provided in sub. (5) does not deny 3rd-party defendants equal protection although wrongful death defendants are subject to the s. 893.205 (2) three-year limitation. Ortman v. Northern States Power Co., 81 Wis. 2d 224, 260 N.W.2d 260 (1975).


That sub. (2) denies 3rd-party tortfeasors the right to bring a contribution action against a negligent employer who was substantially more at fault does not render the statute unconstitutional. Mulder v. Acme-Cleveland Corp., 95 Wis. 2d 173, 290 N.W.2d 276 (1980).

The right to share in a jury award was not dependent on participation in the prosecution of the underlying action. Guyette v. West Bend Mutual Insurance Co., 102 Wis. 2d 496, 307 N.W.2d 311 (Ct. App. 1981).

A provision by an employer of alleged negligent medical care to an employee injured on the job by persons employed for that purpose did not subject the employer to tort liability for malpractice. Jenkins v. Sabourin, 104 Wis. 2d 309, 311 N.W.2d 680 (Ct. App. 1982).

An award for loss of consortium is not subject to the distribution formula under sub. (1). DeMeulemaere v. Transport Insurance Co., 116 Wis. 2d 322, 342 N.W.2d 56 (Ct. App. 1983).
The trial court exceeded its authority under sub. (1) by applying an alternative allocation formula without the consent of all the parties. An award for pain and suffering is subject to allocation under sub. (1), but an award to a spouse for loss of consortium pursuant to sub. (1) and property damage is not. Kotkja v. PPG Industries, Inc., 130 Wis. 2d 499, 388 N.W.2d 160 (1986).


When there are competing claims for insufficient insurance proceeds and one claim is subject to sub. (1) allocation, while the other is not, the formula set forth in this section is inapplicable. 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 dual capacity in relation to the employee. Henning v. General Motors Assembly, 143 Wis. 2d 1, 419 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., 397 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, 132 Wis. 2d 62, 447 N.W.2d 391 (Ct. App. 1989).

In structures 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. Skowrski v. Employers Mutual Co., 158 Wis. 2d 245, 463 N.W.2d 135 (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. Nekoosa Papers, Inc., 158 Wis. 2d 743, 463 N.W.2d 682 (1990).

An employee’s action of cause 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 turn at the time of the 3rd-party negligence. Sutton v. Kaarakka, 159 Wis. 2d 83, 464 N.W.2d 29 (Ct. App. 1990).

A parent corporation may be liable to an employee of a subsidiary as a 3rd-party tortfeasor when the parent negligently undertakes to render services to the subsidiary’s employee. Miller v. Bristol-Meyers, 168 Wis. 2d 863, 458 N.W.2d 31 (1990).

Rights under sub. (1) are not type of subrogation, but provide a direct cause of action. Campion v. Montgomery Elevator Co., 172 Wis. 2d 405, 493 N.W.2d 244 (Ct. App. 1992).

An insurer must be paid under sub. (1) in a 3rd-party settlement for an injury that is compensable but was not a compensable original injury. Nelson v. Rothering, 174 Wis. 2d 296, 496 N.W.2d 87 (1993).

A worker’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. Berna-Mork v. Fennell, 215 Wis. 2d 99, 572 N.W.2d 121 (Ct. App. 1997), 97-0760.

A “temporary help agency” is not a 3rd-party claimant under sub. (1) because an employer that has no connection with the claimant may assume the risk of the claimant’s injury and the employer is not subject to allocation under sub. (1) to claims that are exempt from sub. (1). Zentgraf v. The Hanover Insurance Co., 697 N.W.2d 73 (Ct. App. 2005).

A 3rd-party action filed by an insurer under sub. (1), the insurer has the right to maintain an action for payments it has made to the employee by settling a claim for all of the employees’ damages, including pain and suffering. Thresholders Mutual Insurance Co. v. Page, 217 Wis. 2d 451, 577 N.W.2d 335 (1998), 98-09-02.

A variety of factors indicated that a party’s participation in an action constituted “pressing” a claim under this section. Zentgraf v. The Hanover Insurance Co., 2002 WI App 33, 250 Wis. 2d 281, 640 N.W.2d 743 (Ct. App. 2002).

Under the “dual persona” doctrine, the employer’s second role must be so unrelated to its role as an employer that it constitutes a separate legal persona. Miller v. Bristol-Meyers, 143 Wis. 2d 379, 421 N.W.2d 835 (1988).

The “dual persona” doctrine establishes dual capacities to allow a 3rd-party to sue an employer in tort and an employer in tort to sue a 3rd-party when the parent negligently undertakes to render services to the subsidiary’s employee. Miller v. Bristol-Meyers, 168 Wis. 2d 863, 458 N.W.2d 31 (1990).

The pro rata distribution formula under Brewer, 142 Wis. 2d 864, applies whenever the insurance proceeds are insufficient to satisfy all claims regardless of the reason for the insufficiency, including a settlement by the parties. Allocating a disproportionate amount of the total settlement to claims that are exempt from sub. (1) circumvents legislative intent. The Brewer formula prevents the parties from using settlement proceeds for “end-run” around the worker’s right to maintain the best possible action. Green v. Advance Finishing Technology, Inc., 2005 WI App 70, 282 Wis. 2d 743, 695 N.W.2d 856, 04-0877.

Sub. (1) transfers a worker’s compensation insurer’s right of subrogation into a right of action against direct tort claimants against whom the insurer paid for the employee’s injury. Sub. (1) does not require the employee to prosecute the action along with the employer by virtue of sub. (1). Sub. (1) gives the trial court the right to settle a dispute between the two plaintiffs, as to whether or not a compromise settlement offered by the defendant should be accepted and does not differentiate between the employee and the worker’s compensation insurer. Dalka v. American Family Mutual Insurance Co., 2011 WI App 90, 334 Wis. 2d 686, 799 N.W.2d 923, 10-1425.

This section preserves an existing common law right. It does not create a new right to tort claims against a third party and it does not permit a party to bypass a statute of repose. Cisanto v. Heritage Relocation Services, Inc., 2014 WI App 75, 355 Wis. 2d 355, 851 N.W.2d 771, 13-1369.

A circuit court may compel an employee to accept settlement of a claim against a 3rd party under sub. (1). This result does not violate the employee’s right to a jury trial because the claim sub. (1) is not the counterparty, and the employee’s action was not prohibited from bringing a tort claim against the compensating employer. Ehr v. West Bend Mutual Insurance Co., 2018 WI App 14, 380 Wis. 2d 137, 908 N.W.2d 486, 17-0142.

Under Anderson, 2005 WI 62, the first step in determining the reasonable costs of collection under sub. (1) is to establish the reasonable value of each attorney’s services. In doing so, a court is typically guided by the respective attorneys’ fee agreements. Updated 2017–18 Wis. Stats. Published and certified under s. 35.18. Changes effective after June 19, 2020, are designated by NOTES. (Published 6–19–20)
ments. In this case, however, 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 may determine the reasonable value of an attorney's services in 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 Corp. v. Pekin Ins. Co., 384 Wis. 2d 252, 918 N.W.2d 117, 17-0357.

In this case, the existence of an unfilled 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 upon" 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 allocate the costs of collection. Vande Corp. v. Pekin Insurance Co., 2018 WI App 56, 384 Wis. 2d 252, 918 N.W.2d 117, 17-0357.

Problems in third-party action procedure under the Wisconsin worker’s compensation act. 60 MLR 91.

Impleading a negligent employer in a third-party action when the employer has provided workman’s compensation benefits. 1976 WLR 1201.


**102.30 Other insurance not affected; liability of insured employer.** (1) This chapter does not affect the organization of any mutual or other insurance company or the right of the employer to insure in mutual or other companies against such liability or against the liability for the compensation provided for by this chapter.

(2) An employer may provide by mutual or other insurance, by arrangement with employees or otherwise, for the payment to those employees, their families, their dependents or their representatives, of sick, accident or death benefits in addition to the compensation provided under this chapter. Liability for compensation is not affected by any insurance, contribution or other benefit due to or received by the person entitled to that compensation.

(3) Unless an employee elects to receive sick leave benefits in lieu of compensation under this chapter, if sick leave benefits are paid during the period that temporary disability benefits are payable, the employer shall restore sick leave benefits to the employee in an amount equal in value to the amount payable under this chapter. The combination of temporary disability benefits and sick leave benefits paid to the employee may not exceed the employee’s weekly wage.

(4) Regardless of any insurance or other contract, an employee or dependent entitled to compensation under this chapter may recover compensation directly from the employer and may enforce in the person’s own name, in the manner provided in this chapter, the liability of any insurance company which insured the liability for that compensation. The appearance, whether general or special, of any such insurance carrier by agent or attorney constitutes waiver of the service of copy of application and of notice of hearing required by s. 102.17.

(5) Payment of compensation under this chapter by either the employer or the insurance company shall, to the extent thereof, bar recovery against the other of the amount so paid. As between the employer and the insurance company, payment by either the 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).

**History:** 1973 c. 150; 1975 c. 147 ss. 25, 54; 1975 c. 199; 1985 a. 83; 1987 a. 179; 2015 a. 53.

While 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. It may bring a direct action the insured. Employers Health Insurance Co. v. Tomer, 161 Wis. 2d 733, 469 N.W.2d 263 (Ct. App. 1991).

Although sub. (7) (a), read in isolation, authorizes the reimbursement of a subrogated insurer, where an insurer becomes subrogated by paying medical expenses arising from injuries that are compensable under this chapter, and the employer’s worker’s compensation insurance carrier is in litigation, s. 646.31 (11) precludes the commission 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, 04-2157.

**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 arising from the negligent actions 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 limited liability company 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 order under s. 102.28 (2) (a) exempting the employer from the duty to carry insurance 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 insuring 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 with any information that the department may request relating to worker’s compensation insurance coverage, the department shall revoke the exemption of that employer.

(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.

(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 and present evidence in any administrative hearing or court proceeding instituted for alleged violation of any provision of this chapter.

(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 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) (eb).

(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 venture is sufficient to cover his or her joint liability. Insurance Company of North America v. DILHR, 45 Wis. 2d 361, 173 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 non-temporary, ongoing employee workforce of the client.

(f) “Employee leasing company” means a person that contracts to provide the non-temporary, ongoing employee workforce of a client under a written agreement, regardless of whether the person uses the term “professional employer organization,” “PEO,” “staff leasing 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 cooperative 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 non-temporary, ongoing employee whose service is 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 client of the 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 an insurance policy covering the leased employees of a divided workforce that are consistent with sub. (6) and the cancellation, termination, and nonrenewal of policies that are consistent with sub. (10). On approval by the commissioner of insurance of a master policy filing, an insurer may issue a master policy to an employee leasing company insuring the liability of the employee leasing company under sub. (2).

(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 or an employee of 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 that 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.
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 coverage under s. 102.075 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) 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 company terminates an employee leasing agreement with a client in its entirety, an insurer may cancel or terminate a policy described in subd. 1. covering that client during the policy period by providing written notice of the cancellation or termination to the insured employee leasing company and the department as required under s. 102.31 (2) (a) and by providing that notice to the insured client. The insurer shall state in the notice to the insured client that the policy is being cancelled or terminated due to the termination of the employee leasing agreement. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision 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.

(b) 1. A policy issued under sub. (3) in which the client is the first named insured 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).
An insurer may cancel, terminate, or nonrenew a policy described in subd. 1., including cancellation or termination of a policy providing continued coverage under subd. 4., 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. 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.

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.

3. An insurer may cancel, terminate, or nonrenew a policy providing continued coverage under subd. 4., 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. 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 the extent of the 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 if death benefits are 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 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 division that the interests of the injured employee will be conserved 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. Hamm v. LIRC, 223 Wis. 2d 183, 588 N.W.2d 358 (Cl. 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). The department, the division, or the
commission may deny a request made under s. 19.35 (1) or, subject to s. 102.17 (2m) and (2s), refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding to inspect and copy a record that is confidential under this paragraph, 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. An attorney or 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, except that the department, the division, or the commission is not required to do a random search of its records and may require the requester to provide the approximate date of the injury and any other relevant information that would assist the department, the division, or the commission in finding the record requested. 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 contained 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 (8) 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.

(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 authorizes that inspection or disclosure, and the Wisconsin compensation rating bureau, authorize the 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.


An employer cannot satisfy sub. (3) by rehiring with an intent to fire at a later date. Deliveries Corporation v. LIRC, 111 Wis. 2d 270, 330 N.W.2d 606 (Ct. App. 1983).

An employer has the burden to prove that rehiring was in good faith. West Allis School Dist. v. DILHR, 116 Wis. 2d 410, 342 N.W.2d 415 (1984).

One−day absence from work due to an injury triggered the rehire provision under sub. (3). Link Industries, Inc. v. LIRC, 141 Wis. 2d 551, 415 N.W.2d 574 (Ct. App. 1987).

For liability under sub. (3), the employee must show that he or she: 1) was an employee, 2) sustained a compensable injury, 3) applied for rehire; 4) had the application for rehire refused due to the injury. Universal Foods Corporation v. LIRC, 161 Wis. 2d 467, 467 N.W.2d 793 (Ct. App. 1991).

Sub. (3) does not bar an employer from seeking arbitration under a collective bargaining agreement to determine whether termination following an injury violated the agreement. Sub. (3) relates to harm other than worker injuries and is not subject to
the exclusive remedy provision of s. 102.03 (2); the “exclusive liability” language in sub. (3) does not bar lawsuits but imposes a penalty on the employer for refusal to hire. County of LaCrosse v. WERC, 182 Wis. 2d 15, 513 N.W.2d 708 (1994).

An employer may violate sub. (3), that a violation requires an employer who is unable to return to a prior employment to express an interest in reemployment in a different capacity, was reasonable. Hill v. LIRC, 184 Wis. 2d 110, 516 N.W.2d 441 (Ct. App. 1994).

If an employer shows that it refused to rehire an injured employee because the employee’s position was eliminated to reduce costs and increase efficiency, reasonable cause has been shown under sub. (3). Ray Houston Chevrolet, Inc. v. LIRC, 186 Wis. 2d 118, 519 N.W.2d 649 (Ct. App. 1994).

An attendance policy that includes absences due to work-related injuries as part of the total of absences allowed before termination violates sub. (3). Great Northern Corp. v. LIRC, 189 Wis. 2d 313, 525 N.W.2d 361 (Ct. App. 1994).

Sub. (3) does not contemplate requiring employers to either deviate from a facially reasonable and uniformly applied policy, or explain why it would be unreasonable to do so, when a returning employee requests the accommodation to a non-work and non-injury-related personal need. Sub. (3) does not contain “accommodation” requirements and does not require an employer to change its legitimate and long-standing policies in order to assist an employee in meeting personal obligations. DeBoer Transportation, Inc. v. Swenson, 2011 W114, 535 Wis. 599, 804 N.W.2d 658, 09–056d.

Neither sub. (2) nor case law authorizes employees who are terminated for filing worker’s compensation claims to bring wrongful discharge claims against their employers. Brown v. Pick ’n Save Food Stores, 138 F. Supp. 2d 1133 (2001).

**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 incidental 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 injury, 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; 1975 c. 199; 1979 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.


**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, chiropractic, 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 employer, 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.

2. **LIABILITY for UNNECESSARY TREATMENT.** If an employee who has sustained a compensable injury undertakes in good faith 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 unnecessary 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 findings result from a hearing, the default of a party, or a compromise or stipulation confirmed by the department or the division.

3. **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 employee may have the 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 employee 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.

4. **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.

5. **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.

6. **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.
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. 204.07 subd. (1) (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.


The requirement that medical treatment be provided during the healing period, defined as prior to the time the condition becomes stationary, is not determined by reference to the percentage of disability, but by a determination that the injury has stabilized, as distinguished from continuing medical services, is not compensable. Medincoff v. DILHR, 54 Wis. 2d 7, 194 N.W.2d 670 (1972).

In appropriate cases, the department may postpone a determination of permanent disability for a reasonable period after a claimant completes a competent and reasonable course of physical therapy or vocational rehabilitation as an essential part of the treatment required for full recovery and minimization of damages. Transamerica Insurance Co. v. DILHR, 54 Wis. 2d 272, 195 N.W.2d 656 (1972).

An employee who wishes to consult a second doctor on the front for the first time no further treatment is needed may do so without notice or consent. If the second doctor prescribes an operation that increases the amount of disability, the employer is liable. Spencer v. DILHR, 55 Wis. 2d 525, 200 N.W.2d 611 (1972).

Sub. (7) [now sub. (6)] relieves an employer of liability when the employee refuses treatment provided by the employer, as required under sub. (1). An employer is not required to seek treatment from someone other than the employer. Klein Industrial Salvage v. DILHR, 80 Wis. 2d 457, 259 N.W.2d 124 (1977).

Sub. (8) [now sub. (7)] relieves an employer of liability when the employer refuses treatment provided by the employer, as required under sub. (1). An employer is not required to seek treatment from someone other than the employer. Klein Industrial Salvage v. DILHR, 80 Wis. 2d 457, 259 N.W.2d 124 (1977).

Sub. (9) [now sub. (8)] relieves an employer of liability when the employer refuses treatment provided by the employer, as required under sub. (1). An employer is not required to seek treatment from someone other than the employer. Klein Industrial Salvage v. DILHR, 80 Wis. 2d 457, 259 N.W.2d 124 (1977).

Sub. (10) requires an employer to pay medical expenses even after a final order has been issued. Linsrey v. LIRC, 171 Wis. 2d 499, 493 N.W.2d 14 (1992).

Sub. (2) does not require an employer to pay medical expenses even to out-of-state health care expenses that result from a referral by an in-state practitioner selected in accordance with the statute. UPE Inc. v. LIRC, 201 Wis. 2d 274, 548 N.W.2d 57 (1996), 94–2794.

The continuing obligation to compensate an employee for work-related medical expenses under s. 102.42 does not allow agency review of compromise agreements after the one-year statute of limitations in s. 102.16 (1) (h) if the employer incurs medical expenses after that time. Schenklofski v. LIRC, 203 Wis. 2d 109, 552 N.W.2d 120 (Cl. App. 1996), 96–0051.

Under sub. (2), an employer can seek reimbursement for expenses related to 2 practitioners regardless of whether they are the first 2 practitioners with whom the employee has seen. Hermann Carpet Mart’s v. LIRC, 220 Wis. 2d 611, 583 N.W.2d 662 (Cl. App. 1998), 97–1119.

Section 102.01 (2) (g) sets the date of injury of an occupational disease and s. 102.01 (1) provides that medical expenses incurred before an employee knows of the work–related injury are compensable. Read together, medical expenses in occupa-
tional 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, 598 N.W.2d 377 (Cl. App. 1999), 97–377.

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 continues to receive medically unnecessary and unreasonable treatment in good faith, the employer is responsible for payment. Honthans Restaurants, Inc. v. LIRC, 2000 WI App 273, 240 Wis. 2d 254, 621 N.W.2d 660 (2001). Under sub. (3), the employee can obtain payment for the pharmacist’s charges.

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 (21).

(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 medi-
cally necessary and indicates that no substitution may be made for that prescribed drug by writing on the face of the prescription order or, in the case of a prescription order that is transmitted elec-
tronically, by designating in electronic format the phrase “No sub-
stitutions” 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 employee shall be liable in an amount equal to the dif-
fERENCE 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, includ-
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102.425 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 employee leaves work as the 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 leaves work as a result of the injury and only 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) (a) 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 performs 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 the injury as provided in this paragraph. If an employee’s 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 offset against those average weekly earnings and not against the employee’s actual earnings in the employment in which the employee was engaged at the time of the 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 employee 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.

(8) During a compulsory vacation period scheduled in accordance with a collective bargaining agreement:

(a) 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.

(b) 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.

(9) 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 employer from whom 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), by the employee connected with the employee’s work.


Committee Note, 1971: Employees who have two jobs who have been injured at one of them have in some cases been made totally disabled for work at either job. Sick leave benefits from the other employer may be denied under this paragraph only if prior to the date of injury the employee worked at the employer who suspended eligibility for compensation from both employers. [Bill 371–A]

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

The “as is” rule applies to delays in treatment of a work−related injury caused by a pre−existing condition or due to the threat that anesthesia would cause harm to the pre−existing pregnancy. ITW Deltar v. LIRC, 226 Wis. 2d 11, 593 N.W.2d 908 (Ct. App. 1999), 98−2912.

The “as is” rule applies to delays in treatment of a work−related injury caused by a pre−existing condition. It was reasonable to find that a woman was entitled to benefits payable in full. ITW Deltar v. LIRC, 226 Wis. 2d 11, 593 N.W.2d 908 (Ct. App. 1999), 98−2912.

The purpose of the worker’s compensation program is to compensate employees for loss of income due to their inability to work as a result of work−related injury. Thus, to be a compensable wage loss under this section, the wage loss must be attributable to a work−related injury. An employee who retires for reasons entirely unrelated to the employee’s injury cannot make such a showing because the employee’s wage loss was caused by the employer’s choice to voluntarily retire, not by the work−related injury. Mueller v. LIRC, 2019 WI App 50, 388 Wis. 2d 602, 933 N.W.2d 645, 18−0707.

Section 102.43 shall be subject to the following limitations:

(1) (ag) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter...
for permanent total disability or continuous temporary total disabil-
ity more than 24 months after the date of injury resulting from
an injury that occurred prior to January 1, 2003, shall receive sup-
plemental benefits that shall be payable by the employer or the
employer’s insurance carrier, or in the case of benefits payable to
an employee under s. 102.66, shall be paid by the department out
of the fund created under s. 102.65. Those supplemental benefits
shall be paid only for weeks of disability occurring after January
1, 2005, and shall continue during the period of such total disabil-
sity subsequent to that date.

(am) If the employee is receiving the maximum weekly bene-
fits in effect at the time of the injury, the supplemental benefit for a
week of disability occurring after March 2, 2016, shall be an amount
that, when added to the regular benefit established for the case,
shall equal $669.

(b) If the employee is receiving a weekly benefit that is less
than the maximum benefit that was in effect on the date of the
injury, the supplemental benefit for a week of disability occurring
after March 2, 2016, shall be an amount sufficient to bring the total
weekly benefits to the same proportion of $669 as the employee’s
weekly benefit bears to the maximum in effect on the date of
injury.

(c) 1. An insurance carrier paying the supplemental benefits
required under this subsection shall be entitled to reimbursement
for each such case from the worker’s compensation operations
fund, commencing one year after the date of the first payment of
those benefits and annually thereafter while those payments con-
tinue. To receive reimbursement under this paragraph, an insur-
ance carrier must file a claim for that reimbursement with the
department by no later than 12 months after the end of the year in
which the supplemental benefits were paid and the claim must be
approved by the department.

2. After the expiration of the deadline for filing a claim under
subd. 1., the department shall determine the total amount of all
claims filed by that deadline and shall use that total to determine
the amount to be collected under s. 102.75 (1g) from each licensed
worker’s compensation insurance carrier, deposited in the work-
er’s compensation operations fund, and used to provide reim-
bursement to insurance carriers paying supplemental benefits
under this subsection. Subject to subd. 3., the department shall
pay a claim for reimbursement approved by the department by no
later than 16 months after the end of the year in which the claim
was received by the department.

3. The maximum amount that the department may pay under
subd. 2., in a calendar year is $5,000,000. If the amount deter-
mined payable under subd. 2., in a calendar year is $5,000,000 or
less, the department shall pay that amount. If the amount deter-
mimed payable under subd. 2., in a calendar year exceeds
$5,000,000, the department shall pay $5,000,000 in the year in
which the determination is made and, subject to the maximum
amount payable of $5,000,000 per calendar year, shall pay the
excess in the next calendar year or in subsequent calendar years
until that excess is paid in full. The department shall pay claims
for reimbursement under subd. 2., in the chronological order in
which those claims are received.

(d) This paragraph does not apply to supplemental benefits
paid for an injury that occurs on or after January 1, 2016.

2. 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
eyes, the loss of both hands 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.

(3) 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
causing permanent total disability and shall be payable at the rate 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.

(4) 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.

(4m) (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 rat-
ings 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, com-
posed of physicians practicing in one or more areas of specializa-
tion 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 spe-
cialization or treating discipline, any certifications by a recog-
nized medical specialty board or other agency held by the indi-
vidual, 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 individ-
ual’s knowledge and ability to serve as a member of the medical
advisory committee.

(5) 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
exceed 80 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, tem-
porary 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.
(g) 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).

(6) (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 because of the employee's fault or for 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.

(e) 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.

(g) For purposes of this subsection, if the employer 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.

(h) 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 based upon the physical limitations.

History:

Cross-reference: See also ss. WDW 80.32, 80.34, and 80.50, Wis. adm. code.

Commentary Note, 1971: Employees who are totally disabled receive compensation at the wage level and the compensation rate in effect as of the date of their injury. This is an average of approximately $45.90 per week for the employees who are injured during the year 1970. The intent is to provide for payment of supplemental benefits; for example, an employee who was injured in October 1951 and earning wages in excess of the maximum of $52.86 is receiving $37 a week for total disability. This employee will receive supplemental benefits of $42 a week to bring the total up to $79, which was the maximum February 1, 1970. An employee injured in October 1951 with a wage of $26.43 has been receiving $18.50 per week for total disability. This is 50 percent of the maximum in effect February 1, 1970. Such an employee will receive supplemental benefits of $21 a week to bring the total up to $39.50, which is 50 percent of the maximum in effect February 1, 1970. It is not intended that any death benefit payment be affected by this section. [Bill 371–A]

The department must disregard total loss of earning capacity in the case of a relative scheduled injury. Medincoff v. DLIRH, 54 Wis. 2d, 194 N.W.2d 670 (1972).

"The ‘odd-lot’ doctrine is a part of Wisconsin law. It provides that if a claimant makes a prima facie case that he or she was injured in an industrial accident and, because of injury, age, education, and capacity, is unable to secure continuing gainful employment, the burden of proving that he or she is employable shall be placed on the employer. Balczewski v. DLIRH, 76 Wis. 4d 247, 251 N.W.2d 794 (1977)."

Sub. (6) (b) allows the department to reopen an award to account for loss of earning capacity from an unscheduled injury, even if a scheduled injury causes the termination of benefits. Mireles v. LIRC, 2000 WI 96, 237 Wis. 2d, 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 by a clear and convincing proof of the disability attributable to the unscheduled injury or injuries. Secura Insurance v. LIRC, 2000 WI App 237, 239 Wis. 2d 315, 620 N.W.2d 626, 00–0303.

Sub. (2) does not require proof of a job search as part of prima facie case of odd-lot unemployment, provided the claimant shows that because of the injury and other Balczewski factors such as age, education, capacity, and training, he or she is unable to secure continuous gainful employment. In the odd-lot category, it falls to the employer to rebut the prima facie case by demonstrating that the claimant is employable and that jobs exist for him or her. Beecher v. LIRC, 2004 WI 88, 273 Wis. 2d 136, 682 N.W.2d 29, 02–1582.

The burden that shifts from the claimant to the employer under Balczewski is a burden of persuasion, but only as to the 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, 2004 WI 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, 777 N.W.2d 890.

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 actual, suitable 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 descriptive information of a prospective employer to satisfy its rebuttal burden. The employer's duty in ascertaining whether an actual job exists is to obtain information from the prospective employer about the job requirements, not participate in the informant about the claimant. Cargill Feed Division/Cargill Malt v. LIRC, 2010 WI App 115, 329 Wis. 2d 206, 789 N.W.2d 326, 09–1877.

LIRC improperly expanded the evidentiary burden on employers seeking to rebut a claimant's prima facie odd-lot case that established in Beecher and Balczewski by establishing a preference for evidence that the employer referred the claimant to prospective employers with specific job openings actually available, although an employer may rely on evidence that the employer referred a claimant to a prospective employer to support its rebuttal case. Cargill Feed Division/Cargill Malt v. LIRC, 2010 WI App 115, 329 Wis. 2d 206, 789 N.W.2d 326, 09–1877.

Payment of the supplemental benefit of s. 102.44 (1) is not precluded to former state employees by Art. IV, s. 26. The second injury fund is not impressed with a constructive trust which prevents its use for payment of such supplemental benefits. 62 Attly. Gen. 69.
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 dependents’ death benefit is not wiped out. “Unaccrued 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 by a court but includes compensation awarded by other means, such as compromise and settlement agreements.

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) (g) 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 among 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. 102.48, they shall be entitled to such portion of the 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 is for a primary death benefit, the department shall determine, after all evidence is presented, whether the deceased employee made any contribution to the interests of the state in case of such dispute.

(4) MINORS. Benefits due to minors under this section may be paid as provided in s. 102.45.

(5) 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.

(6) 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.

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

(c) “Fire department” 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.

(d) “Political subdivision” includes counties, municipalities and municipal corporations.

(e) “Rescue squad” means a member of a legally organized rescue squad.

(f) “State” means the state of Wisconsin and its departments, divisions, 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 unemancipated 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 funds. (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 domestic partner under ch. 770, prior to the time of the injury, and a child not the deceased employee’s own by 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 3rd 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 conserve 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 upon 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.

3m. 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 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.

4. A child over 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.

(b) Where a dependent who is entitled to death benefits under this subsection survives the deceased employee, all other dependents shall be excluded. The charging of any portion of the support and maintenance of a child upon one of the parents, or any voluntary contribution toward the support of a child by a parent, or an obligation to support a child by a parent constitutes living with any such parent within the meaning of this subsection.

(2) WHO 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, lineage 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. The death benefit shall be directly recoverable by and payable to the dependents entitled to the death benefit or their legal guardians or trustees. In case 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.

(5) WHEN NOT INTERESTED. No dependent of an injured employee shall be deemed a party in interest to any proceeding by the employee for the enforcement of the employee’s claim for compensation, nor with respect to the compromise thereof by such employee. A compromise of all liability entered into by an employee is binding upon the employee’s dependents, except that any dependent of a deceased employee may submit the compromise for review under s. 102.16 (1). (6) DIVISION AMONG DEPENDENTS. 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 employee of the deceased. History: 1975 c. 94, 147; 1977 c. 195; 1981 c. 92; 1983 a. 98, 368; 1993 a. 112, 492; 1995 a. 225; 1997 a. 253; 1999 a. 162; 2009 a. 28; 2015 a. 55.

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

A posthumously born illegitimate child does not qualify as a dependent under sub. (4). Claimants not falling within one of the classifications under sub. (2) (a) will not qualify for benefits, regardless of dependency in fact. Larson v. DILHR, 76 Wis. 2d 599, 252 N.W.2d 33 (1977).

Sub. (5) has no application to a claim for a death benefit because a death benefit claim is not an “employee’s claim for compensation.” While sub. (5) prohibits a dependent from being party to a working claim for disability benefits, a dependent claiming a death benefit is prosecuting only his or her own claim. Edward Brothers, Inc. v. LIRC, 2007 WI App 128, 300 Wis. 2d 638, 731 N.W.2d 302, 66–2398.

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, 50 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;
   (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, 500 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;
   (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.

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 sub. (18), with a separate award for the additional physical effects of the deafness, rather than considering the entire range of disabilities as a whole. When a loss is recognized by and compensable under this section, the schedule therein is exclusive. Vande Zande v. ILHR Dept., 70 Wis. 2d 1066, 236 N.W.2d 255 (1975).

The “loss of an arm at the shoulder” under sub. (1) includes injuries to the shoulder. Hagen v. LIRC, 510 Wis. 2d 12, 563 N.W.2d 454 (1997), 94–0374.

102.53 Multiple injury variations. In case an injury causes more than one permanent disability specified in ss. 102.44 (3), 102.52 and 102.55, the period for which indemnity shall be payable for each additional equal or lesser disability shall be increased as follows:

(1) In the case of impairment of both eyes, by 200 percent.
(2) In the case of disabilities on the same hand covered by s. 102.52 (9), by 100 percent for the first equal or lesser disability and by 150 percent for the 2nd and 3rd equal or lesser disabilities.
(3) In the case of disabilities on the same foot covered by s. 102.52 (14), by 20 percent.
(4) In all other cases, by 20 percent.
(5) The aggregate result as computed by applying sub. (1), and the aggregate result for members on the same hand or foot as computed by applying subs. (2) and (3), shall each be taken as a unit for applying sub. (4) as between such units, and as between such units and each other disability.

History: 1973 c. 150; 1979 c. 278.

102.54 Injury to dominant hand. If an injury to an employee’s dominant hand causes a disability specified in s. 102.52 (1) to (9) or amputation of more than two-thirds of the distal joint of a finger, the period for which indemnity is payable for that disability or amputation is increased by 25 percent. This increase is in addition to any other increase payable under s. 102.53 but, for cases in which an injury causes more than one permanent disability, the increase under this section shall be based on the periods specified in s. 102.52 (1) to (9) for each disability and not on any increased period specified in s. 102.53.

History: 1993 a. 81.
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: 2015 a. 55.

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.

(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”, and “date of injury” in such case mean the date of wage loss.

(5) 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; or

(d) Layoff, provided the layoff is complete and continuous for 6 months.

(6) No claim under sub. (4) may be filed until 7 consecutive days of removal from noisy employment after the time of injury except that under sub. (4) (d) the 7 consecutive days’ period may commence within the last 2 months of layoff.

(7) 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.

(8) 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.

(9) 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.

(10) Any amount paid to an employee under this section by any employer shall be credited against compensation payable by any employer to such employee for occupational deafness under subs. (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.

(11) 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.

(12) No compensation shall be payable for temporary total or temporary partial disability due to occupational deafness may be paid only if the loss of hearing exceeds 20 percent of binaural hearing loss.

(13) 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. 102.02 (3) (4) and 102.17 (4), for a case of occupational deafness in which the date of injury is on or after 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 able to make claims for occupational deafness until 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)

It is a prerequisite for an award of benefits under sub. (10) that the employee must have suffered some compensable hearing loss other than tinnitus; sub. (10) does not require a compensable hearing loss in both ears or in a particular ear. General Castings Corporation v. LIRC, 152 Wis. 2d 631, 449 N.W.2d 619 (Ct. App. 1989).

Agency interpretation and application of sub. (8) is discussed. Harrischfeger Corporation v. LIRC, 196 Wis. 2d 650, 539 N.W.2d 335 (1995), 93–0947.

102.56 Disfigurement. 

(1) Subject to sub. (2), if an employee is so 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 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
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 employee performing work that is subject to this chapter develops any clinically observable abnormality or condition that, on competent medical opinion, predisposes or renders the employee in any manner differentially susceptible to disability such an extent that it is inadvisable for the employee to continue employment involving that exposure, is discharged from or ceases to continue the employment, and suffers wage loss by reason of that discharge from, or cessation of, employment, the department or the division may allow such sum as the department or the division considers just as compensation for that wage loss, not exceeding $13,000. If a nondisabling condition may also be caused by toxic or hazardous exposure not related to employment and if the employee has a history of that exposure, compensation as provided under this section or any other remedy for loss of earning capacity shall not be allowed. If the employee is discharged from employment prior to a finding by the department or the division that it is inadvisable for the employee to continue in that employment and if it is reasonably probable that continued exposure would result in disability, the liability of the employer who discharges the employee is primary, and the liability of the employer’s insurer is secondary, under the same procedure and to the same extent as provided by s. 102.62.

(2) Upon application of any employer or employee the department or the division may direct any employee of the employer or an employee who, in the course of his or her employment, has been exposed to toxic or hazardous substances or conditions to submit to examination by one or more physicians appointed by the department or the division to determine whether the employee has developed any abnormality or condition under sub. (1), and the degree of that abnormality or condition. The cost of the medical examination shall be borne by the person making application. The physician conducting the examination shall submit the results of the examination to the department or the division, which shall submit copies of the reports to the employee and employer, who shall have an opportunity to rebut the reports if a request to submit a rebuttal is made to the department or the division within 10 days after the department or the division mails the report to the parties. The department or the division shall make its findings as to whether it is inadvisable for the employee to continue in his or her employment.

(3) If after direction by the commission, or any member of the commission, the department, the division, or an examiner, an employee refuses to submit to an examination or in any way obstructs the examination, the employee’s right to compensation under this section shall be barred.

(4) No payment shall be made to an employee under this section unless he or she shall have worked for a reasonable period of 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 other employer under this section.

(6) This section does not apply to an employee whose claim of injury is presumed to be caused by employment under s. 102.03 (6).

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 failure of the employer to obey any reasonable 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 provisions in this chapter 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.

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 if that 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 the department or the division deems necessary.
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 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 made in all such cases regardless of whether the employee's permanent total disability is calculated 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 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 written permit issued under ch. 103.

(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 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 unlawfully issued by an official 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).

(7) This section does not apply to a person selling or distributing 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.

(8) 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.

102.61 Indemnity under rehabilitation law. (1) Subject to sub. (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 state in which the employee resides or in which the employee resided at the time of becoming physically disabled, shall, in addition to other indemnity, be paid the actual and necessary costs of tuition, fees, books, and travel required for the employee's rehabilitation training program and, if the employee receives that instruction elsewhere than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the conditions and limitations specified in sub. (1r). The costs of travel under this subsection shall be paid 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, or 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 either the employer's ability to provide suitable employment or a vocational rehabilitation counselor's ability to recommend a rehabilitation 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 (e) 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).

(d) If an employee receives services from a private rehabilitation counselor under par. (a) and later receives similar services from the department under sub. (1) without the prior approval of the employer or insurance carrier, the employer or insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) (b) or for tuition, fee, book, travel, and maintenance costs under sub. (1) that exceed what the employee or insurance carrier would have been liable for under the rehabilitative training program developed by the private rehabilitation counselor.

(e) Nothing in this subsection prevents an employer or insurance carrier from providing an employee with the services of a private rehabilitation counselor or with rehabilitative training under sub. (3) before the department makes its determination under par. (a).

(f) The department shall promulgate rules establishing procedures and requirements for the private rehabilitation counseling and rehabilitative training program under this subsection. Those rules shall include rules specifying the procedure and requirements for certification of private rehabilitation counselors.

(1r) An employee who receives a course of instruction or other rehabilitative training under sub. (1) or (1m) is subject to the following conditions and limitations:

(a) The employee must undertake the course of instruction within 60 days from the date when the employee has sufficiently recovered from the injury to permit so doing, or as soon thereafter as the employer or agency having charge of the instruction shall provide opportunity for the rehabilitation.

(b) The employee must continue in rehabilitation training with such reasonable regularity as health and situation will permit.

(c) The employee may not have the costs of tuition, fees, books, travel, and maintenance paid under sub. (1) or the costs of private rehabilitation counseling and rehabilitative training paid 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. DWD 80.49, 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 costs required to complete the rehabilitative training program is warranted. Beloit 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 sub. (1g) or 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 261, 796 N.W.2d 217, 10−1219.

102.62 Primary and secondary liability; unchangeable. 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.


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 draw 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. 33.

102.64 Attorney general shall represent state and commission. (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) (f), (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 appear on behalf of the commission, whether or not the party or parties of the other side 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; 1977 c. 187 s. 134; 1978 c. 20; 1983 a. 98; 1995 a. 27 ss. 3745g, 9130 (4); 1997 a. 3; 2007 a. 185; 2009 a. 28; 2011 a. 183; 2015 a. 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 nonlapsable fund designated as the work injury supplemental benefit fund. Moneys in the fund may be expended only as provided in s. 20.445 (1) (t) 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 management, 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) (t).

(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 work 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 80.08. Wis. adm. code.

This section authorizes the award of benefits for otherwise meritorious claims barred by the statute of limitations in effect at the time the claim arose. State v. DILHR, 101 Wis. 2d 396, 340 N.W.2d 758 (1981).

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 carry insurance 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 for the current fiscal year, other than for increased, double, or treble compensation, 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). The department shall collect from each licensed worker’s compensation carrier the proportion of reimbursement approved by the department under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable under this chapter by the carrier 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, except employers, other than for increased, double, or treble compensation. The council on worker’s compensation, the division, and the commission shall annually certify any costs and expenses for worker’s compensation activities to the department at such time as the secretary requires.

(a) Subject to par. (b), the department shall collect from each licensed worker’s compensation carrier the proportion of reimbursement approved by the department under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable under this chapter by the carrier 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, except employers, 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 is $5,000,000 or less, the department shall collect that amount. 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 nonlapsible 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 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, nonlapsible 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).

(d) Amounts collected from employers 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) (e).

(1m) The moneys collected or received under sub. (1), together with all accrued interest, shall constitute a separate nonlapsible 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.

(ag) The department shall monitor the cash balance in, and incurred losses to, the uninsured employers fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the uninsured employers fund on known claims exceed 85 percent of the cash balance in the uninsured employers 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 uninsured employers fund may become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the uninsured employer’s fund is likely to become inadequate to fund all claims under s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will be paid.

(3a) If the secretary files the certificate under par. (a), the department may expend the moneys in the uninsured employers fund, beginning on the first day of the first July after the secretary files that certificate, to make payments under s. 102.81 (1) to employees of uninsured employers and to obtain reinsurance under s. 102.81 (2).

(b) If the secretary does not file the certificate under par. (a), the department may not expend the moneys in the uninsured employers fund.

(c) If, after filing the certificate under par. (a), the secretary files the certificate under par. (ag), the department may expend the moneys in the uninsured employers fund only to make payments under s. 102.81 (1) to employees of uninsured employers on claims made before the date specified in that certificate and to obtain reinsurance under s. 102.81 (2) for the payment of those claims.

(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. Without limitation by reason of enumeration, it is presumed unless shown to the contrary that the “same interest or interests” includes the spouse, child or parent of the individual who owned or controlled the business, or any combination of more than one of them.

2. The transferee has continued or resumed the business of the uninsured employer, either in the same establishment or elsewhere; or 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 a 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), 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 from an insurance agent or insurance broker.

(3) An injured employee of an uninsured employer or his or her dependents may attempt to receive payment under sub. (2) or sub. (1) by an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop–loss reinsurance from an insurance agent or insurance broker.

(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 employer’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 employer’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).
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 ss. 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 and any member or manager of an uninsured employer that is a limited liability company may be found individually and jointly and severally liable for the payments, interest, costs and other fees specified in a warrant under this section if after proper proceedings for the collection of those amounts from the corporation or limited liability company, as provided in this section, the corporation or limited liability company is unable to pay those amounts to the department. The personal liability of the officers and directors of a corporation or of the members and managers of a limited liability company as provided in this subsection is an independent obligation, survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or limited liability company, and shall be set forth in a determination or decision issued under s. 102.82.


102.835 Levy for delinquent payments. (1) Definitions. In this section:

(a) “Debt” means a delinquent payment.

(ad) “Debtor” means an uninsured employer or an individual found personally liable under s. 102.83 (8) who owes the department a debt.

(d) “Levy” means all powers of distraint and seizure.

(e) “Payment” means a payment owed to the department under s. 102.82 and includes interest on that payment.

(f) “Property” includes all tangible and intangible personal property and rights to that property, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, amounts paid periodically pursuant to a pension or retirement program, rents, proceeds of insurance and amounts paid pursuant to a contract.

(2) Powers of levy and distraint. If any debtor 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. Enforcement of Levy. (a) Any debtor who fails to surrender any property or rights to property that is subject to levy, upon demand of 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 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 amount within one year after the date of service of the original levy.

(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 irrationally 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 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 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 amount 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 obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. If the 3rd party is an insurance company, the insurance company shall file an answer with the department within 45 days after the service of the levy.

(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.

(18) 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.

(19) 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.

(20) 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.


102.84 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.

History: 1993 a. 81.

102.85 Uninsured employers; penalties. (1) An employer who fails to comply with s. 102.16 (3) or 102.28 (2) for less than 11 days shall forfeit not less than $100 nor more than $1,000.

(b) An employer who fails to comply with s. 102.16 (3) or 102.28 (2) for more than 10 days shall forfeit not less than $10 nor more than $100 for each day on which the employer fails to comply with s. 102.16 (3) or 102.28 (2).

(2) An employer who is required to provide worker’s compensation insurance coverage under this chapter shall forfeit not less than $100 nor more than $1,000 if the employer does any of the following:

(a) Gives false information about the coverage to his or her employees, the department or any other person who contracts with the employer and who requests evidence of worker’s compensation coverage in relation to that contract.

(b) Fails to notify a person who contracts with the employer that the coverage has been canceled in relation to that contract.

(2m) The court may waive a forfeiture imposed under sub. (1) or (2) if the court finds that the employer is subject to this chapter only because the employer elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).

(2p) The court may waive a forfeiture imposed under sub. (1) or (2) if the court finds that the sole reason for the uninsured employer’s failure to comply with s. 102.82 (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.

(3) An employer who violates an order to cease operations under s. 102.28 (4) is guilty of a Class I felony.

(4) (a) If a court imposes a fine or forfeiture under subs. (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.

(d) The clerk of the court shall collect and transmit to the county treasurer the uninsured employer surcharge and other amounts required under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit the amount of the uninsured employer surcharge, together with any interest thereon, in the uninsured employers fund as provided in s. 102.80 (1).

(5) (a) The payment of any judgment under this section may be suspended or deferred for not more than 90 days in the discretion of the court. The court shall suspend a judgment under this section upon the motion of the department, if the department is satisfied that the employer’s violation of s. 102.16 (3) or 102.28 (2) was beyond the employer’s control and that the employer no longer violates s. 102.16 (3) or 102.28 (2).

(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 by 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.

(h) Notice that if the defendant makes a deposit and signs the stipulation the stipulation will be treated as 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 stipulation, may decide to summon the defendant or 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.

(5) 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.

(6) 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 or an arrest warrant.

(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 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.
(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.