

1971 Assembly Bill 371

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CHAPTER 148, Laws of 1971

AN ACT to amend 102.03 (1) (c) 1 and (4), 102.11 (1) (intro.), 102.25 (1), 102.26 (3), 102.47 (2), 102.50, 102.555 (4) (intro.) and (a), 102.56, 102.58 and 102.59 (3); to repeal and recreate 102.18 (4); and to create 102.17 (1) (d), 102.43 (6) and 102.44 (1) of the statutes, relating to changes in workmen's compensation law recommended by the council on workmen's compensation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 102.03 (1) (c) 1 of the statutes is amended to read:

102.03 (1) (c) 1. Where, at the time of the injury, the employe is performing service growing out of and incidental to his employment. Every employe going to and from his employment in the ordinary and usual way, while on the premises of his employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises, shall be deemed to be performing service growing out of and incidental to his employment; so shall any employe going between an employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way; and so shall any fireman or municipal utility employe responding to a call for assistance outside the limits of his city or village, unless such response is in violation of law. The premises of his employer shall be deemed to include also the premises of any other person on whose premises service is being performed.

SECTION 2. 102.03 (4) of the statutes is amended to read:

102.03 (4) The right to compensation and the amount thereof 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 employes who are entitled to changes in the rate of compensation provided in s. 102.44 (1).

SECTION 3. 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability shall be taken at not less than ~~\$12.50~~ \$30 nor more than ~~\$112.86~~ \$128.57, resulting in a maximum weekly compensation rate of ~~\$79~~ \$90, for permanent total disability or death at not less than ~~\$20~~ \$30 nor more than ~~\$112.86~~ \$128.57, resulting in a maximum weekly compensation rate of ~~\$79~~ \$90 for permanent total disability and of ~~\$56.43~~ \$64.285 for death benefits; and for permanent partial disability at not less than ~~\$20~~ \$30, nor more than ~~\$69.29~~ \$71.43, resulting in a maximum weekly compensation rate of ~~\$48.50~~ \$50. Between said limits the average weekly earnings shall be determined as follows:

SECTION 4. 102.17 (1) (d) of the statutes is created to read:

102.17 (1) (d) The contents of certified reports of investigation, made by industrial safety specialists who are employed by the department and available for cross-examination, served upon the parties 15 days prior to hearing, shall constitute prima facie evidence as to matter contained therein.

SECTION 5. 102.18 (4) of the statutes is repealed and recreated to read:

102.18 (4) (a) The commission may remove or transfer the proceedings pending before a commissioner or examiner. Unless the liability under ss. 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) On motion, the commission may set aside, modify or change any order, findings or award, whether made by a commissioner, an examiner or by the commission, at any time within 20 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The commission may on its own motion, for reasons it deems sufficient, set aside any final order or award within one year from the date thereof upon grounds of mistake or newly discovered evidence, and after extending an opportunity for hearing may make new findings and order, or it may reinstate the previous findings and order or award.

SECTION 6. 102.25 (1) of the statutes is amended to read:

102.25 (1) The department, or any party aggrieved by a judgment entered upon the review of any order or award, may appeal therefrom within 30 days from the date of service by either party upon the other of notice of entry of judgment. However, it shall not be necessary for the department or any party to the action to execute, serve or file the undertaking required by s. 274.11 (3) ~~in order to perfect such appeal or to serve, or secure approval of, the transcript of reporter's notes~~; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as state causes on such calendar. The state shall be deemed a party aggrieved, within the meaning of this subsection, whenever a judgment is entered upon such a review confirming any order or award against it. At any time before the case is set down for hearing in the supreme court, the parties may have the record remanded by the court to the department in the same manner and for the same purposes as provided for remanding from the circuit court to the department under s. 102.24 (2).

SECTION 7. 102.26 (3) of the statutes is amended to read:

102.26 (3) Compensation in favor of any claimant, which exceeds \$100, shall be made payable to such claimant in person; however, in any award the department ~~shall~~ may upon application of any interested party and subject to the provisions of sub. (2) fix the fee of his attorney or representative and provide in the award for

payment of such fee direct to the person entitled thereto. At the request of the claimant medical expense, witness fees and other charges associated with the claim may be ordered paid out of the amount awarded. Payment according to the directions of the award shall protect the employer and his insurer from any claim of attorney's lien.

SECTION 8. 102.43 (6) of the statutes is created to read:

102.43 (6) Sick leave benefits in connection with other employment shall not be considered in computing actual wage loss from the employer in whose employ injury was sustained.

SECTION 9. 102.44 (1) of the statutes is created to read:

102.44 (1) Notwithstanding any other provision of this chapter, every employe who is receiving workmen's compensation under this chapter for a total disability resulting from an injury which occurred prior to February 1, 1970, shall receive supplemental benefits which shall be payable in the first instance by the employer or his insurance carrier. These supplemental benefits shall be paid only for weeks of disability occurring after the effective date of this subsection (1971) and shall continue during the period of such total disability subsequent to that date.

(a) If such employe is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit shall be an amount which, when added to the regular benefit established for the case, shall equal the maximum weekly benefit in effect for a totally disabled employe whose injury occurred on February 1, 1970.

(b) If such employe is receiving a weekly benefit which is less than the maximum benefit which was in effect on the date of the injury, the supplemental benefit shall be an amount sufficient to bring the total weekly benefits to the same proportion of the maximum weekly benefit payable February 1, 1970, as the employe's weekly benefit bears to the maximum in effect on the date of injury.

(c) The employer or insurance carrier paying the supplemental benefits required under this subsection shall be entitled to reimbursement for each such case from the fund established by s. 102.59, commencing one year from the date of the first such payment and annually thereafter while such payments continue. Claims for such reimbursement shall be approved by the department.

SECTION 10. 102.47 (2) of the statutes is amended to read:

102.47 (2) Where the injury proximately causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed ~~\$500~~ \$750, any remaining sum to be paid to dependents, as provided in this section and ss. 102.46 and 102.48, and there shall be no liability for any other payments. All computations under this subsection shall take into consideration the present value of future payments.

SECTION 11. 102.50 of the statutes is amended to read:

102.50 In all cases where death of an employe proximately results from the injury the employer or insurer shall pay the reasonable expense for burial, not exceeding ~~\$500~~ \$750.

SECTION 12. 102.555 (4) (intro.) and (a) of the statutes are amended to read:

102.555 (4) (intro.) Subject to the limitations herein contained and the provisions of s. 102.53 (2) there shall be payable for total occupational deafness of one ear, 36 weeks of compen-

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sation; for total occupational deafness of both ears, 216 weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided. The reduction of the periods for which indemnity is paid made because of age under s. 102.53 (2) shall not apply in cases of occupational deafness; however, a reduction of the period shall be made at the rate of one-half per cent for each year that the age of such employe exceeds 50 in recognition of the less attributable to presbycusis apply in cases for occupational deafness under par. (a); such reduction shall not apply in claims for occupational deafness under pars. (b), (c) and (d), and in lieu thereof a reduction shall be made at the rate of one-half per cent for each year that the age of the employe exceeds 50. In cases covered by this subsection "time of injury," "occurrence of injury," or "date of injury" shall be exclusively at the option of the employe, be the date of occurrence of any of the following events to an employe:

(a) Transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

SECTION 13. 102.56 of the statutes is amended to read:

102.56 If an employe is so permanently disfigured about the face, head, neck, hand or arm as to occasion potential loss of wage, the department may allow such sum for compensation on account thereof, as it deems just, not exceeding his average annual earnings as defined in s. 102.11.

SECTION 14. 102.58 of the statutes is amended to read:

102.58 Where injury is caused by the failure of the employe to use safety devices where provided in accordance with any statute or lawful order of the department and adequately maintained, and their use is reasonably enforced by the employer, or where injury results from the employe's failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employe and of which the employe has notice, or where injury results from the intoxication of the employe, the compensation and death benefit provided herein shall be reduced 15% but the total reduction shall not exceed \$7,500.

SECTION 15. 102.59 (3) of the statutes is amended to read:

102.59 (3) The moneys so paid into the state treasury, with all accrued interest, is hereby appropriated to the department for the discharge of all liability for special additional indemnity accruing under this section and s. 102.44 (1).

SECTION 16. EFFECTIVE DATE. This act shall take effect on July 1, 1971, or on the first day of the month following passage and publication, whichever is later.