OVERVIEW OF WISCONSIN WORKER’S COMPENSATION SYSTEM

Julie J. Darnieder
Adjunct Professor Law
Marquette Law School
julie.darnieder@marquette.edu

NATURE OF THE SYSTEM

Created by Wisconsin Legislature in 1911

Social legislation

Substitute for tort system (injured person suing wrongdoer in civil court, seeking damages)

Tradeoff for Employers & Workers

Workers give up unlimited damages that could be awarded by jury in return for prompt, fixed benefits; negligence of worker does not defeat claim

Employers receive protection from large jury awards in exchange for no-fault system that automatically pays workers

Statutory System

Chapter 102 of the Wisconsin Statutes, Administrative Code (DWD 80) and case law interpreting the statute, constitute the law in its entirety

Legislative changes are crafted by Advisory Council made up of voting members from organized labor, management & a non-voting member from the insurance industry

Proposals for new legislation submitted to the Advisory Council by labor, management groups, insurance, etc.

Public hearings are held throughout the state to hear from individuals regarding the proposals

Council develops an “Agreed Bill” which is submitted to state legislature and usually is adopted

Administrative Process

Employers purchase insurance or prove to state that they are financially able to fund the coverage themselves

Coverage is dictated by statute—all policies provide the same benefits

Department of Workforce Development (DWD) administers the program

Payments are made by insurance companies or self-funded employers

State monitors payments
Are payments being made on time
Are correct payments being made
Are appropriate benefits being made available to workers
Penalties will be imposed where appropriate

Required forms are submitted to State, most done electronically

CONDITIONS OF LIABILITY

Wis. Stat. § 102.03 reads:

(1) Liability under this chapter shall exist against an employer only where the following conditions concur:

(a) Where the employee sustains an injury.
(b) Where, at the time of the injury, both the employer and employee are subject to the provisions of this chapter.
(c) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment.
(d) Where the injury is not intentionally self-inflicted.
(e) Where the accident or disease causing injury arises out of the employee’s employment.

STATUTE OF LIMITATIONS – See §102.17(4)

12 years from the date of injury or 12 years from the date of the last payment of compensation (temporary or permanent disability) not including payment of medical expenses, whichever is latest

In event of occupational disease and certain specified injuries (brain injury, amputation, certain joint replacements) there is no statute of limitations

EXCLUSIVE REMEDY – See §102.03(2)

May not sue employer for negligence

May sue a third party who caused the injury (auto accident, product liability, etc.) (see §102.29 for formula to be applied to recovery for reimbursement for benefits paid)

EMPLOYERS COVERED – See §102.04

Any person (except a farmer) who usually employs 3 or more employees in one or more locations

Any person (except a farmer) who usually employs fewer than three employees, if wages of $500 or more were paid for services performed in Wisconsin in a calendar quarter

A farmer who employs 6 or more employees on 20 or more days in a calendar year

The state and municipalities

Anyone who has purchased a worker’s compensation policy
EMPLOYEES COVERED – See §102.07

Every person in the service of another (does not include domestic servants)

Independent contractors not covered, but to be considered independent contractor must meet all requirements of §102.07(8) (b) set forth below (very difficult standard—many independent contractors will be considered employees under the statute).

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 selfemployment 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.

INJURIES COVERED

**Accidental injury**, defined as “a fortuitous event, unexpected and unforeseen by the injured person.”

**Occupational disease**, defined as “mental or physical harm that results from occupational exposure but that is not so sudden or traumatic as to fit within the definition of an accident.

**Aggravation of preexisting condition**

Injury is compensable if the work activity precipitates, aggravates and accelerates beyond normal progression, a progressively deteriorating or degenerative condition,

or if there is a structural change (breakage) while the employee is engaged in usual or normal activity on the job and there is a relationship between the breakage and the effort exerted.

**Mental injury**

If traumatic, clearly covered

If not arising from traumatic injury, must result from a situation of greater dimensions than the day-to-day emotional strain and tension all employees must experience (except where the work stress precipitates, aggravates, or accelerates a preexisting physical condition; i.e. a physical injury results)
MEDICAL CAUSATION

See attached WKC16B Medical Report form—contains appropriate inquiries

TYPES OF BENEFITS

Temporary Disability

Replaces wage loss while off the job due to injury

May be *total* or *partial*, based on actual lost time

Paid at 2/3’s of average weekly wage on the date of injury, subject to a maximum (see chart)

Paid during healing period

Worker under medical treatment

Condition has not stabilized

Permanent Disability

*Scheduled injuries* based on maximum for particular body part (Wis. Stats. §102.52)

- The loss of an arm at the shoulder, 500 weeks;
- The loss of an arm at the elbow, 450 weeks;
- The loss of a hand, 400 weeks;
- The loss of a leg at the hip joint, 500 weeks;
- The loss of a leg at the knee, 425 weeks;
- The loss of a foot at the ankle, 250 weeks;
- The loss of an eye by enucleation or evisceration, 275 weeks;
- Total impairment of one eye for industrial use, 250 weeks;
- Total deafness from accident or sudden trauma, 330 weeks;
- Total deafness of one ear from accident or sudden trauma, 55 weeks.

*Unscheduled injuries* are injuries not identified on the schedule, generally head, neck, torso, mental or systemic illnesses

1000 week maximum unless permanent *total* disability (benefits paid for life)

Rate based on date of injury (see chart)

Paid after temporary disability benefits are concluded

Based on functional assessment of impairment made by doctor (may be minimum assessments for certain injuries or surgery)

With unscheduled injury, may include component for loss of earning capacity

Medical Expenses

Wis. Stats.§102.42 provides “The employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental and hospital treatment, medicines, medical and surgical supplies, . . .”
Worker may choose any doctor—not limited to a panel of doctors
Worker has 2 choices of doctors (referrals do not count as a choice)
Treatment must be reasonable and necessary—procedure available for litigation of reasonableness and necessity disputes under §102.16

**Loss of Earning Capacity**
Available for unscheduled injuries if there has been no return to work within 85% of date of injury wage
Paid as part of permanent disability award, with credit for functional impairment made
Based on opinions of vocational experts who compare date of injury earning capacity with residual earning capacity, taking into account restrictions resulting from injury

**Vocational Rehabilitation**
Available for scheduled or unscheduled injuries
Division of Vocational Rehabilitation (DVR) makes determination of eligibility
If eligible, may receive tuition and books from DVR, together with temporary disability, mileage and meals while attending school

**Death Benefits**
Injury causes death, either immediately or at a later time
Paid when individual who is permanently totally disabled dies for any reason

**LITIGATED CLAIMS**
Although the vast majority of claims are paid without being disputed, some claims are denied or a dispute develops over the amount or type of benefits owed. Therefore, a process exists for resolving disputes, again administrative in nature.

**Disputed Claims**
Application for Hearing is filed with DWD
May be prehearing conference to determine whether case is ready for hearing
Most evidence filed with DWD and exchanged by parties before hearing

Hearing is held by Administrative Law Judge
Jury trials not conducted
No motions or discovery
ALJ is considered “professional fact finder”
Written Order is issued

Review by Labor & Industry Review Commission (LIRC)

Three person panel, political appointees

Review record and make Findings of Fact and issue Order (ultimate fact finder)

Circuit Court Appeal

No trial at this stage

Circuit Court judge reviews the record, and may only confirm

or set aside the Order, only under following conditions:

   The findings of fact do not support the Order

   The Order was procured by fraud (on the part of LIRC)

   LIRC acted without or in excess of its powers
       (material facts are not supported by any credible and substantial evidence)

Court of Appeals

Wisconsin Supreme Court

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