



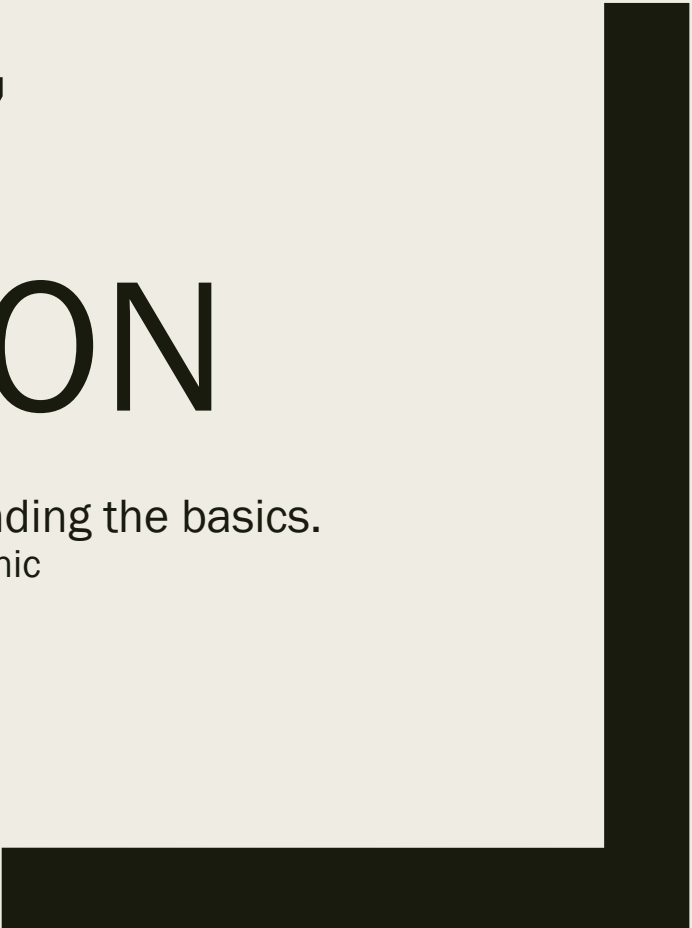
WORKERS' COMPENSATION

Helping claimants avoid common pitfalls by understanding the basics.

Sponsored by the Marquette Volunteer Legal Clinic

Presented by Lyris Medrano

January 14, 2021



Resources

- Wisconsin Workers Compensation Act
<https://dwd.wisconsin.gov/dwd/publications/wc/wkc-1-p.pdf>
- Wisconsin Department of Workforce Development Website
<https://dwd.wisconsin.gov/wc/>
- Workers Section of DWD Website <https://dwd.wisconsin.gov/wc/workers/>

Goals of this presentation

- To provide a basic understanding of the elements of a WC Claim.
- To give an overview of the flow of a “typical” WC claim.
- To provide examples of common questions with which potential WC Applicants may present at the legal clinic and answers to those questions.
- To provide basic points on which to advise injured workers that present to the clinic “just” looking for an “orientation.”

Some basic information about the WC system:

- This is a no-fault system. Employee does not have to prove that negligence of employer caused the injury. Employers cannot point to the negligence of the employee as a defense. Negligence and contributory negligence are not pertinent concepts.
- Employee must prove facts establishing the conditions of liability as delineated in §102.03(1).
- If conditions of liability exist, benefits must be paid unless employer has a legal, medical, or factual defense.
- Most claims are uncontested. If a claim is denied, the employee has a right to an evidentiary hearing. Employees do not need attorneys for undisputed claims. (Attorneys fees on undisputed claims max out at \$250.) Attorneys usually don't get involved until after the claim has been denied.
- The Worker's Compensation Division is designed to make sure employees receive all benefits due as promptly as possible.

What it is and what it isn't

- The "compensation" is primarily wage replacement and medical expenses and it is the sole remedy of the injured worker.
- The WC system is administrative; disputes are heard by an Administrative Law Judge (ALJ).
- Claimants, referred to as Applicants, may represent themselves in a disputed WC Claim regardless of the value of the claim.
- The compensation is not "damages" for pain and suffering; compensation does not include any and all financial damage that flows from the injury.
- Disputes are not resolved by full-blown litigation. There are hearings, but there is no formal discovery and no motion practice.
- Employers, referred to as Respondents, are usually represented by an insurance company and their attorney in disputed claims.

102.03(2): EXCLUSIVE REMEDY & THIRD PARTY CLAIMS

Wis. Stat. § 102.03 goes on to say:

- (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 local ordinance.

TIP: Be on the lookout for potential third-party claims when reviewing a WC claim. Third-party claims open the door for an injured person to make claims in tort for damages including pain and suffering, actual wage loss, loss of consortium, etc. that they cannot make under workers' comp.

Definition of employers and employees

§§ 102.04 and 102.07

Wis. Stat. § 102.04 lists employers who fall within the Act's jurisdiction. See § 102.04 for complete definition and exclusions.

The vast majority of Wisconsin employers are subject to the Worker's Compensation Act. The law requires that, to be subject to the Act, an employer must have either three employees or a payroll of \$500.00 in the calendar quarter immediately preceding the injury date. Wis. Stat. Sec. 102.04(1)(b). There are several specific exclusions that occasionally arise:

- a. Independent contractors who maintain a separate, distinct business; all provisions in Wis. Stat. Sec. 102.07(8)(b) must be met for a person to be an independent contractor.
- b. Sole proprietors, partners and members of limited liability companies are generally not considered to be employees, unless they have elected to be covered by endorsement on the policy. Wis. Stat. Sec. 102.075.
- c. Officers of small corporations may elect not to be insured under their corporation's worker's compensation policy, again as an endorsement to the insurance contract. Wis. Stat. Sec. 102.076.
- d. Certain farm and domestic laborers are excluded from coverage pursuant to Wis. Stat. Sec. 102.07. Farm employers must have a WC policy if the farmer has six employees on any 20 days in a calendar year. 102.04(1)(c)

Definition of employers and employees

§§ 102.04 and 102.07

Wis. Stat. § 102.07 defines “employee.”

- (1) (a) Every person, including all officials, in the service of the state, or of any municipality therein whether elected or under any appointment, or contract of hire, express or implied, and whether a resident or employed or injured within or without the state.
- (2) Any peace officer shall be considered an employee while engaged in the enforcement of peace or in the pursuit and capture of those charged with crime.
- (3) Nothing herein contained shall prevent municipalities from paying teachers, police officers, fire fighters and other employees full salaries during disability, nor interfere with any pension funds, nor prevent payment to teachers, police officers or fire fighters therefrom.
- (4) (a) Every person in the service of another under any contract of hire, express or implied, all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer, including minors, who shall have the same power of contracting as adult employees, but not including the following:
 1. Domestic servants.
 2. Any person whose employment is not in the course of a trade, business, profession or occupation of the employer, unless as to any of said classes, the employer has elected to include them.
- (b) Par. (a) 2. shall not operate to exclude an employee whose employment is in the course of any trade, business, profession or occupation of the employer, however casual, unusual, desultory or isolated the employer’s trade, business, profession or occupation may be.
- (6) Every person selling or distributing newspapers or magazines on the street or from house to house.
- (7) Members 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.

[Continued on next slide]

Definition of employers and employees §§ 102.04 and 102.07 cont'd.

- (8) (a) Except as provided in par. (b) and (bm), every independent contractor is, for the purpose of this chapter, an employee of an employer under this chapter for whom he or she is performing service in the course of the trade, business, profession or occupation of such employer at the time of the injury.
- (b) An independent contractor is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:
1. Maintains a separate business with his or her own office, equipment, materials and other facilities.
 2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed 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.

Sections (9) through (18) discuss a variety of miscellaneous categories: national guard members, volunteers, students, juveniles and adults performing community service, sole proprietors electing WC coverage, inmates, prisoners of county jail and community service.

The 5 elements of a compensable WC Claim

Wis. Stat. § 102.03 reads, in part:

(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.

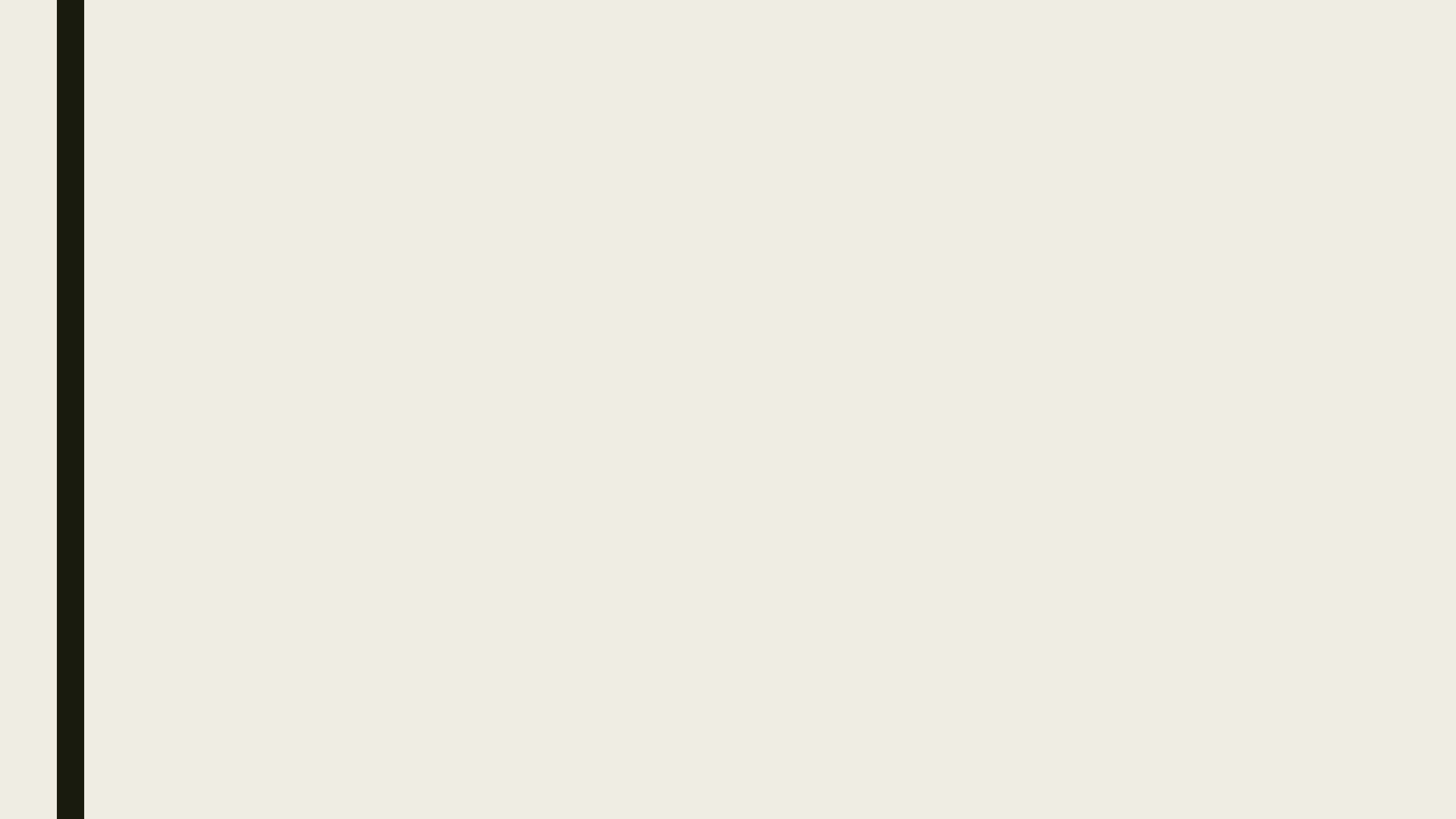
Common issues that arise in establishing the elements of a compensable claim.

- Lack of reporting or inaccurate reporting of the injury.
- Misclassification of workers as independent contractors.
- Injured workers not knowing who the employer is (see this a lot with construction/roofing).
- Unclear terms of employment.
- Deviations from work duties.
- Lack of medical evidence or diagnosis.
- Lack of witnesses.

How you can help

- Helping clarify the when, where and how of an injury with a claimant is essential. Just because something “happened at work” does not make it compensable under WC. A clear history of how the injury occurred is essential to the success of any WC claim.
- Helping with reporting of the injury. (<https://www.wcrb.org/coverage-lookup/>)
- Helping claimants understand what type of injury they can/should claim. (Occupational exposure injuries v. traumatic injuries)
- Clarifying their rights and responsibilities. Especially with regard to medical treatment.
- Verifying AWW and that they are being paid properly.
- Knowing when to refer them to a WC attorney.

Before we dive into this any further, here is how I explain the flow of a WC claim to my clients... (I'm no artist, but my drawing seems to help!)



Date of the injury

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. 102.01(2)(g)1
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. 102.01(2)(g)2
3. The date of injury determines who pays for the injury.
4. The date of injury determines the wage rate.
5. Maximum Wage and Rate Chart.

TTD is paid at 2/3 of average week wage, up to a maximum.

PPD is also 2/3 of the average week wage, up to a maximum. The maximum is much lower.

WORKER'S COMPENSATION – MAXIMUM WAGE AND RATE CHART

EFFECTIVE DATE	01/01/2021	01/01/2020	01/01/2019	01/01/2018	01/01/2017	03/02/2016	01/01/2016	01/01/2015	01/01/2014	01/01/2013
MAXIMUM WEEKLY WAGE FOR TEMPORARY, PERMANENT TOTAL & DEATH BENEFITS	\$1,641.00	\$1,576.50	\$1,524.00	\$1,491.00	\$1,441.50	\$1,404.00	\$1,404.00	\$1,366.50	\$1,338.00	\$1,318.50
WEEKLY RATE	\$1,094.00	\$1,051.00	\$1,016.00	\$994.00	\$961.00	\$936.00	\$936.00	\$911.00	\$892.00	\$879.00
DAILY RATE	\$182.33	\$175.17	\$169.33	\$165.67	\$160.17	\$156.00	\$156.00	\$151.83	\$148.67	\$146.50
MAXIMUM WAGE FOR PERMANENT PARTIAL ONLY	\$543.00	\$543.00	\$543.00	\$543.00	\$543.00	\$513.00	\$483.00	\$483.00	\$483.00	\$483.00
MONTHLY RATE	\$1,568.67	\$1,568.67	\$1,568.67	\$1,568.67	\$1,568.67	\$1,481.89	\$1,395.33	\$1,395.33	\$1,395.33	\$1,395.33
WEEKLY RATE	\$362.00	\$362.00	\$362.00	\$362.00	\$362.00	\$342.00	\$322.00	\$322.00	\$322.00	\$322.00
MAXIMUM ANNUAL WAGE (WEEKLY WAGE X 50)	\$82,050.00	\$78,825.00	\$76,200.00	\$74,550.00	\$72,075.00	\$70,200.00	\$70,200.00	\$68,325.00	\$66,900.00	\$65,925.00
MAXIMUM DEATH BENEFIT (ANNUAL WAGE X 4)	\$328,200.00	\$315,300.00	\$304,800.00	\$298,200.00	\$288,300.00	\$280,800.00	\$280,800.00	\$273,300.00	\$267,600.00	\$263,700.00
MAXIMUM PAYMENT TO SPOUSE										
MONTHLY RATE	\$4,740.66	\$4,554.33	\$4,402.66	\$4,307.33	\$4,164.33	\$4,056.00	\$4,056.00	\$3,947.66	\$3,865.33	\$3,808.00
WEEKLY RATE	\$1,094.00	\$1,051.00	\$1,016.00	\$994.00	\$961.00	\$936.00	\$936.00	\$911.00	\$892.00	\$879.00
MAXIMUM PAYMENT FROM CHILDREN'S FUND										
MONTHLY RATE	\$474.07	\$455.43	\$440.27	\$430.73	\$416.43	\$405.60	\$405.60	\$394.77	\$386.53	\$380.90
WEEKLY RATE	\$109.40	\$105.10	\$101.60	\$99.40	\$96.10	\$93.60	\$93.60	\$91.10	\$89.20	\$87.90
DEATH BENEFITS TO UNESTRANGED PARENTS	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00
MAXIMUM BURIAL EXPENSE	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
PAYMENT INTO STATE FUND §. 102.59	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
PAYMENT INTO STATE FUND §. 102.49	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
TOTAL DEPENDENCY— §. 102.49										

PAYMENT INTO STATE FUND
NO DEPENDENCY—§. 102.48

01/01/2021	\$65,640 per installment if max \$64,340 if parents receive \$6,500	01/01/2018	\$59,640 per installment if max \$58,340 if parents receive \$6,500
01/01/2020	\$63,060 per installment if max \$61,760 if parents receive \$6,500	01/01/2017	\$57,660 per installment if max \$56,360 if parents receive \$6,500
01/01/2019	\$60,960 per installment if max \$59,660 if parents receive \$6,500	01/01/2016	\$56,160 per installment if max \$54,860 if parents receive \$6,500

Effective For Injuries On Or After 1/1/2006
\$20,000 plus 100% of Death Benefit in 5 Installments

DWD is an equal opportunity employer and service provider. If you have a disability and need assistance with this information, please dial 7-1-1 for Wisconsin Relay Service. Please contact the Worker's compensation Division at (608) 266-1340 to request information in an alternate format, including translated to

Average Weekly Wage - § 102.11

The most important calculation is the correct calculation of the average weekly wage (AWW). It sets the basis for all TTD and PPD benefits.

Section 102.11 sets out, in detail, the rules for calculating the AWW. The most basic methods are set forth below.

Average weekly wage per Wis. Stat. Sec. 102.11. The average weekly wage for full-time employees in Wisconsin is the greater of the two calculations in sections 1. and 2. below. See section 3. for part-time workers:

1. Multiply the hourly wage rate, including all shift premiums, by the employee's normal full-time scheduled hours per week. Overtime is not generally considered unless it becomes part of the regular schedule. Normal full time employment for most employees is 40 hours. 102.11(1)(a)4
2. Divide the gross wages the employee earned in the 52 weeks preceding the injury by the number of weeks actually worked in that 52-week period. Employers should exclude from the wages reported compensation received for vacation, sickness and disability. The weeks attributable to vacation, sickness and disability should also be eliminated.
3. For part-time employees, see 102.11(1)(am)1-4. See also box 4 on WC-13A.
4. The Division will assist in the calculation of wage. The relevant wage statutes are Wis. Stat. Sec. 102.11, Wis. Stat. Sec. 102.43(6) and Wis. Adm. Code Sec. DWD 80.51. Wages are reported on form WKC-13A.

WKC-13

SUPPLEMENTARY REPORT ON ACCIDENTS AND INDUSTRIAL DISEASES

Department of Workforce Development
 Worker's Compensation Division
 201 E. Washington Ave., Rm. C100
 P.O. Box 7901
 Madison, WI 53707-7901
 Imaging Server Fax: (608) 260-2503
 Telephone: (608) 266-1340
 Fax: (608) 267-0394
<http://www.dwd.wisconsin/wc>
 e-mail: DWDDWC@dwd.wisconsin.gov

SUBMIT THE WKC-12 WITH THIS REPORT IF IT WAS NOT PREVIOUSLY SUBMITTED.

Provision of your Social Security Number (SSN) is voluntary. Failure to provide it may result in an information processing delay.
 Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m), Wisconsin Statutes].

1. Name of Injured Employee			2. Social Security Number				
3. Address		City		State		Zip Code	
4. Injury Date	5. Last Day Employee Worked	6. Nature of Injury or Illness					
7. Employer Name			8. Address (City, State and Zip)				
9. Insurance Carrier (Not TPA or Adjuster)			<input type="checkbox"/> Check if employer is self-insured		10. Insurer Claim Number	11. N.A.I.C. Number	
12. Insurer's Claim Handling Address		City		State		Zip Code	
13. Date & Type of First Compensation Payment		Type: <input type="checkbox"/> TTD <input type="checkbox"/> TPD <input type="checkbox"/> Salary Cont'd <input type="checkbox"/> Other	14. Amount of 1st payment \$	15. Weekly Wage Used to Set TTD Rate: \$ <input type="checkbox"/> Rate below max. - WKC-13-A attached <input type="checkbox"/> WKC-13-A not attached - Estimated date it will be sent is:		16. TTD Rate: \$	
17. If 1st Payment Was Late, (more than 14 days after injury date) State Reason:							
18. Remarks: <input type="checkbox"/> Denied <input type="checkbox"/> Being Investigated (Attach Copy of Denial Letter)							
<input type="checkbox"/> Suspended -- Lack of Medical Information							
<input type="checkbox"/> Suspended -- Other Reason (Attach Copy of Suspension Letter)							
Date Final Medical Report required under DWD 80.02(2)(e) 4 is anticipated: <input type="checkbox"/> Other Remarks (Specify):							
Payment Period							
19. Type of Payment	20. Last Day of Work	21. Date of Return to Work or End of Healing (Do not enter if TTD or TPD continues to be paid)	22. No. of Employer Paid Holidays	23. No. of Weeks and/or Days Paid	24. Rate	25. Amount of Comp. Paid	26. Accumulated Total Amount Paid
<input type="checkbox"/> TTD <input type="checkbox"/> TPD <input type="checkbox"/> Other:							
<input type="checkbox"/> TTD <input type="checkbox"/> TPD <input type="checkbox"/> Other:							
<input type="checkbox"/> TTD <input type="checkbox"/> TPD <input type="checkbox"/> Other:							
<input type="checkbox"/> TTD <input type="checkbox"/> TPD <input type="checkbox"/> Other:							
27. Amount of Permanent Partial Disability due: (Attach supporting medical report if not previously submitted.) Wks. @ \$ = \$			Indicate amount of PPD paid to date: \$				
28. Final Indemnity Payment Date Type of Payment: Date of Payment:				29. Has the worker returned to work with wages at 90% or more of wages at the time of injury? <input type="checkbox"/> Yes <input type="checkbox"/> No			
30. Report Prepared By		31. Work Phone No. () -	32. Position			33. Date Signed	

Types of Injuries

- Scheduled v. Unscheduled
- Traumatic v. Occupational
- Direct cause v. cause by precipitation aggravation and acceleration of a pre-existing progressively deteriorating or degenerative condition beyond normal progression

Extremities v. everything else (trunk, head, neck, chest abdomen, psychological/mental injuries, lungs.

One incident v. exposure to a work condition over time. (exposure can happen on the same day.)

Did this incident/exposure cause a breakage or were you already kind of breaking and this made it break faster or worse than it would have otherwise?

The “Schedule”

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

- (1) The loss of an arm at the shoulder, 500 weeks;
- (2) The loss of an arm at the elbow, 450 weeks;
- (3) The loss of a hand, 400 weeks;
- (4) The loss of a palm where the thumb remains, 325 weeks;
- (5) The loss of a thumb and the metacarpal bone thereof, 160 weeks;
- (6) The loss of a thumb at the proximal joint, 120 weeks;
- (7) The loss of a thumb at the distal joint, 50 weeks;
- (8) The loss of all fingers on one hand at their proximal joints, 225 weeks;
- (9) Losses of fingers on each hand as follows:
 - (a) An index finger and the metacarpal bone thereof, 60 weeks;
 - (b) An index finger at the proximal joint, 50 weeks;
 - (c) An index finger at the second joint, 30 weeks;
 - (d) An index finger at the distal joint, 12 weeks;
 - (e) A middle finger and the metacarpal bone thereof, 45 weeks;
 - (f) A middle finger at the proximal joint, 35 weeks;
 - (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;
 - (g) The third, fourth or little toe with the metatarsal bone thereof, 20 weeks;
 - (h) The third, fourth or little toe at the proximal joint, 6 weeks;
 - (i) The third, fourth or little toe at the second or distal joint, 4 weeks;
- (15) The loss of an eye by enucleation or evisceration, 275 weeks;
- (16) Total impairment of one eye for industrial use, 250 weeks;
- (17) Total deafness from accident or sudden trauma, 330 weeks;
- (18) Total deafness of one ear from accident or sudden trauma, 55 weeks.

Primary Compensation

- Temporary Disability - TTD: Temporary Total Disability or TPD: Temporary Partial Disability
- PPD: Permanent Partial Disability
- LOEC: Loss of earning Capacity
- PTD: Permanent Total Disability

- Note: No LOEC for scheduled injuries.
- Also note: If there are questions about LOEC or PTD, claimants should absolutely be referred to a lawyer. The value of the claim, the probability of a dispute arising and the number of factors needing to be considered increase to a level that most lay people would not be able to navigate well without the guidance of an attorney.

Other Compensation

- Vocational Rehabilitation
- Disfigurement
- Death Benefits
- Penalties
 - *Bad Faith*
 - *Delay*
 - *Unreasonable Refusal to Rehire*
 - *Safety Violation (OSHA?)*

Note: These are also claims which I would recommend the client seek consultation with a WC attorney.

Medical Treatment Issues

- Poor/No follow up
- Occupational Health Clinics – GET OUT!
- Two choice rule
- Poor reporting of injury and/or preexisting conditions
- Not providing Work Restrictions to Employer
- Not following work restrictions or other recommendations
- Not reporting for work provided by the employer within Doctor's restrictions

FORMS

- Most forms can be found online. Here are some common ones with which you may be asked for help.
- WKC-7
- WKC-16B
- COR
- WKC-3
- <https://dwd.wisconsin.gov/dwd/publications/wc/wkc-1-p.pdf>

Department of Workforce Development
Wisconsin Compensation Division
331 E. Washington Ave., Room 4300
Madison, WI 53701-7900
Telephone: 608.224.3300
Fax: 608.227.0326
*By using a computer to create
and print this form, you are certifying that you are
not using a form that is not the current version.

HEARING APPLICATION
Please Read Instructions on Page S-1 First.

Workmen's Compensation Act, Chapter S 103.01, Wisconsin Statutes
 Wisconsin Administrative Code, Chapter DWD 11.01, Wisconsin Administrative Code
 Wisconsin Compensation Act, Chapter S 103.01, Wisconsin Statutes
 Wisconsin Administrative Code, Chapter DWD 11.01, Wisconsin Administrative Code
 Wisconsin Compensation Act, Chapter S 103.01, Wisconsin Statutes
 Wisconsin Administrative Code, Chapter DWD 11.01, Wisconsin Administrative Code

1. Employer Name, Address, City, State, Zip		2. Employee Name, Address, City, State, Zip (Use The CH 100)		3. Social Security Number (Last 4 Digits) If Employer Cannot Provide Social Security Number	
1a. Employer Social Security No.		2a. Federal Employer Identification Number (If Known)		3a. Last Date Employee Worked Before Socially Insured	
1b. Employee Telephone No. (If Available) Area Code: _____		2b. Employer Telephone No. (Include Area Code): _____		3b. Date of Injury (Specify Month, Day and Year)	
1c. Date of Birth (Month/Day/Year) _____		2c. Date of Employer Business _____		4. How Was Injury Occurred? <input type="checkbox"/> Yes <input type="checkbox"/> No (Specify Date, Location, Activity, etc.)	
1d. Employee's Present Family Name & R1 Address _____		2d. Employee Occupation When Injured _____		4a. How Was Employer's Fault Determined? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, Specify Date & Location)	
		2e. Employee Gross Weekly Wage When Injured _____		4b. How Was Employer's Fault Determined? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, Specify Date & Location)	
Answer Questions 5 To 5c If Claim Is Made For Death Benefit					
5. Is the Occupational Address of Deceased the Same as the Address of the Applicant? <input type="checkbox"/> Yes <input type="checkbox"/> No		5a. Name of Deceased and Date of Death _____		5b. Age of Deceased at Date of Death? <input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Attorney's Name and His (Her) Office Address _____		7. How Was Death Determined? <input type="checkbox"/> Homicide <input type="checkbox"/> Fall <input type="checkbox"/> Fire <input type="checkbox"/> Other _____		8. Do You Have Other Dependents? <input type="checkbox"/> Yes <input type="checkbox"/> No	
8. How Was Death Determined? (Specify First Name of Person, Last Name, Address)		9. How Was Death Determined? <input type="checkbox"/> Homicide <input type="checkbox"/> Fall <input type="checkbox"/> Fire <input type="checkbox"/> Other _____			
7. Check the Date (Month/Day/Year) Compensation is Being Sought and Specify Who is Making Claim (Temporary and Permanent Disability) by Month and Year From _____ to _____					
7a. <input type="checkbox"/> Temporary Partial Disability			7b. <input type="checkbox"/> Compensation Total Allowance		
7c. <input type="checkbox"/> Permanent Total Disability _____ % of Body Part			7d. <input type="checkbox"/> Permanent Total Disability Starting Date _____		
8. <input type="checkbox"/> Medical Expense Denied \$ _____ Has Treatment Received? <input type="checkbox"/> Yes <input type="checkbox"/> No		9a. <input type="checkbox"/> Family		9b. <input type="checkbox"/> Other	
9. Names of Medical Facilities to Which Treated Applicant:					
10. Is the Employee Working Now? <input type="checkbox"/> Yes <input type="checkbox"/> No					
11. Were Medical Expenses Paid? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, By Whom?)				12. Have You Currently Received Workers' Compensation Disability Benefits? <input type="checkbox"/> Yes <input type="checkbox"/> No	
13. Has Address and Accruals Determined? (Some Determination Been Made for Loss of Wages?) <input type="checkbox"/> Yes <input type="checkbox"/> No				14. How Was Injury Determined by Workers' Compensation?	
15. Total of Cash or Cash Equivalent Received in Settlement of Hearing is Being Sought at the Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No				16. If Settled, How Was Settlement of Hearing? (Specify Amount)	
17. Employee Signature _____ Date Signed _____				17. FOR OFFICE USE ONLY: Received by _____ <input type="checkbox"/> 8:00 <input type="checkbox"/> 8:30 <input type="checkbox"/> 9:00 <input type="checkbox"/> 9:30 <input type="checkbox"/> 10:00 <input type="checkbox"/> 10:30 <input type="checkbox"/> 11:00	

DWD 100 (1/11) - WISCONSIN COMPENSATION DIVISION

COVID-19 and Wisconsin WC

COVID-19 as an occupational injury in Wisconsin

COVID-19 is compensable in Wisconsin, as is any other disease or occupational illness arising out of employment while in the course and scope of employment

- Wis. Stat. § 102.03(1)(c)1: “Where, at the time of the injury, the employee is performing services growing out of and incidental to his or her employment.”
- Wis. Stat. § 102.03(1)(e): “Where the... disease causing injury arises out of the employee’s employment.”

Cutler-Hammer, Inc. v. Industrial Commission, 5 Wis. 2d 247, 92 N.W.2d 824 (1958): The employment does not need to be the force producing the injury. Rather, an injury “arises out of employment when by reason of employment the employee is present at a place where he is injured through... an outside force, or the conditions of the location constitute a zone of special danger.”

Wisconsin follows the “positional risk doctrine”

Most diseases, infections, and viruses can be compensable in Wisconsin, including the flu or even the common cold. See Vilter Mfg. Co. v. Industrial Commission, 192 Wis. 362, 212 N.W. 641 (1927), where a worker contracted smallpox during a one-day visit to a hospital while in the course and scope of his employment.

- All benefits available to any other worker’s compensation claimant are available to a COVID-19 worker’s compensation claimant or dependent, including medical expenses, indemnity benefits, and death benefits.
- Standards of compensability and burdens of proof are the same as any other worker’s compensation injury. A claimant must provide an opinion from a medical doctor to a reasonable degree of medical probability that the condition was caused by “an appreciable period of workplace exposure that was either the sole cause of the condition, or at least a material contributory causative factor in the condition’s onset or progression,” i.e. Box 13 on the WKC-16B form.

COVID-19 and Wisconsin WC

2019 Wisconsin Act 185

- Amended Wis. Stat. § 102.03 to create subsection (6)

“An employee or volunteer for an employer that provides fire fighting, law enforcement, or medical treatment of COVID-19, and who has regular, direct contact with, or is regularly in close proximity to, patients or other members of the public requiring emergency services” is entitled to the presumption that a COVID-19 infection was caused by employment. o Rebuttable presumption “by specific evidence that the injury was caused by exposure to COVID-19 outside of... work for the employer.”

The claimant must prove that he or she “has been exposed to persons with confirmed cases of COVID-19 in the course of employment.”

- The presumption is only applicable for COVID-19 infections that occurred between March 12, 2020, and June 10, 2020. Those are the dates that a public health emergency was declared by Governor Evers, and 30 days after termination of Governor Evers’ order, respectively.
- The presumption is not affected by the Wisconsin Supreme Court decision in Wisconsin Legislature v. Palm, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900, which invalidated DHS Secretary Palm’s Order #28, not Governor Evers’ public health emergency order.

COVID-19 and Wisconsin WC: The Backlog

The Office of Workers Compensation Hearings (OWCH) did not schedule hearings for most of 2020 due to COVID-19. There is a tremendous backlog of hearings as a result. Many clients may be upset if this is not explained to them properly by their attorney.

In-person and virtual hearings are now being scheduled. The following notice was released on January 13, 2021:



State of Wisconsin DIVISION OF HEARINGS AND APPEALS
Brian Hayes, Administrator

Office of Worker's Compensation Hearings
P.O. Box 7922
Madison, WI 53707-7922

Telephone: (608) 266-7709
FAX: (608) 266-0018
Email: DHAWCMail@wisconsin.gov

Policy on Converting In-Person Hearings to Video Hearings and Policy on Scheduling Hearings for Parties Outside the Madison and Milwaukee Hearing Areas.

The Office of Worker's Compensation Hearings (OWCH) has resumed in-person hearings as of January 19, 2021. For the immediate future, all in-person hearings will be held in Milwaukee or Madison. OWCH has made significant effort to make the hearing rooms safe and in compliance with state, local, and CDC guidelines. For those cases outside the Madison or Milwaukee area in which the applicant has not previously agreed to have his or her hearing scheduled in Milwaukee or Madison, OWCH will hold a pre-hearing/settlement conference to either settle the case or facilitate scheduling a hearing. A pre-hearing/settlement conference will not be scheduled for cases in which the applicant has requested in writing that the hearing be scheduled at Madison or Milwaukee.

OWCH offers the option of holding hearings by video. The ALJs and OWCH have sole authority to determine which hearings may be held by video and which hearings may be held in-person. Parties may request to convert an in-person hearing to a video hearing or OWCH may review the claim and decide to convert it to a video hearing. Situations may arise in which the ALJ may decide that neither an in-person-hearing in Madison or Milwaukee nor a video hearing is appropriate. The ALJ will address such scheduling concerns as they arise on a case-by-case basis.

Converting a scheduled in-person hearing to a video hearing by request of the parties. If you wish to switch from an in-person hearing to a video hearing, you must make a request to the ALJ assigned to your case. This request must be made as soon as possible but no later than 15 days before the hearing date, in order to ensure that a video room can be reserved and to schedule a connectivity conference. Please note that hearings will not be cancelled or postponed for the purpose of switching from an in-person hearing to a video hearing. The video hearing will be held at the same date, time, and before the same judge as referenced in your hearing notice. Your request to switch to the video hearing must include your reasons for the request. The ALJ will decide if the hearing can be converted taking into consideration the complexity of the case, the number of witnesses, as well as video hearing room availability.

Converting a scheduled in-person hearing to a video hearing by decision of the ALJ. The ALJ and OWCH have ultimate authority to determine whether a case is appropriate for a video hearing. An ALJ may, at his or her discretion, convert an in-person hearing to a video hearing. Factors that will be considered are the number of witnesses, the complexity of the claims, and the length of the hearing. The conversion will not affect the date or time of the hearing. As with hearings that are converted by request, there will be no postponements to effectuate the change.

BASIC TIPS FOR PREVENTING THE DENIAL OF A WORKER'S COMPENSATION CLAIM

1. Make the report!

- a. Don't wait.
- b. The details are important.
- c. The date of the accident is very important. You must know the date.
- d. Enter the contact details of witnesses.
- e. Take photos if you can or make a drawing of the station/machine which caused your injury.

2. Go to the doctor.

- a. Don't wait.
- b. Tell your doctor you were injured at work and explain HOW.
 - i. The details are important.
 - ii. The date of your injury is very important.
- c. Be honest with your doctor.

d. You have the right to choose your doctor except in cases of emergency. At that time, your employer has the right to choose the provider. Then you can choose your provider for the follow up care.

i. Always ask for a referral in writing if you are going to go to a new provider for treatment.

ii. You may only seek a second opinion without a referral **ONE TIME**.

3. Follow your doctor's recommendations.

- a. Do not do activities, at work or at home, that fall outside the restrictions given by your doctor.
- b. Do not delay in receiving treatment or tests that are recommended the doctor.

4. Ask for your restrictions from the doctor or therapist in writing.

a. Every time you go to the doctor, request a copy of your restrictions. Those restrictions determine your benefits.

BASIC TIPS FOR PREVENTING THE DENIAL OF A WORKER'S COMPENSATION CLAIM

5. Keep your employer informed of your treatment and restrictions.

a. A copy of your medical restrictions should go to your employer after every appointment.

6. Do not refuse work.

a. If your employer offers you work within your restrictions, you must present to work.

b. Do not give your employer any excuse to fire you.

7. Don't let the insurance carrier:

a. Record your conversation over the phone.

b. Send a nurse or case worker with you to your appointment. If they want to talk to your doctor, they can do so after your appointment. They are not entitled to enter the room with you during your appointment with your doctor.

c. "Forget" some of your benefits. You have to provide documentation for your mileage and temporary partial disability benefits. Send your documentation by fax or e-mail so you have evidence that you submitted it.

d. Catch you doing activities your doctor has prohibited.

8. Call a lawyer if:

a. You are refused payment of a weekly benefit when doctor has taken you off work.

b. You are refused payment of medical expenses or a medical procedure, for example surgery that is recommended by your doctor.

c. You are notified that you are to attend an exam by an "independent" doctor (IME).

d. Your doctor says you have a percentage of permanent disability/permanent restrictions.

e. OSHA performs an investigation after your accident.

f. You are fired after a work injury.

g. A family member dies because of work-related injuries.

h. You have questions about the benefits that are you are receiving.