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Amendments To DWD 80 of the Wisconsin Administrative Code

PLAIN LANGUAGE SUMMARY

EFFECTIVE July, 2004

- 1. Supplementary Reports by Employers and Insurance Companies.** Under the current rule self-insured employers and insurance carriers are required to submit supplemental reports only if the reported injury meets the definition of lost time under DWD 80.02(1)(a). This amendment will require self-insured employers and insurance companies to submit supplemental reports for all claims reported whether or not they meet the lost-time definition. The amendment will not require the reporting of no lost time or denied claims but will require the filing of supplemental reports for all claims that are reported. DWD 80.02(2)(b) of the Wisconsin Administrative Code.
- 2. Written Notice by Employers and Insurance Carriers.** This amendment will require self-insured employers and insurance carriers to provide notice of denial to the Worker's Compensation Division and employees for claims which are initially reported and paid but later denied. The current rule is inconsistent with the requirement to report only compensable claims. DWD 80.02(g)2 of the Wisconsin Administrative Code.
- 3. Written Notice by Employers and Insurance Carriers.** DWD 80.02(2)(h) of the Wisconsin Administrative Code is repealed. Under the current rule self-insured employers and insurance carriers are required to provide the Worker's Compensation Division with written notice related to denial or continued investigation of claims with copies of the report provided to employees. A new subsection will be created to cover this situation.
- 4. Notice by Employers and Insurance Carriers to Employees.** DWD 80.02(2M) of the Wisconsin Administrative Code is created. This amendment will clarify that notice of denial or investigation of claims is to be sent to the employee along with a statement advising the employee of the right to a hearing before the department. The notice of investigation will specify if additional medical or other information is needed to complete the investigation. This notice must be sent to the employee and is not required to be sent to the Worker's Compensation Division.
- 5. Electronic Reporting.** This amendment will permit the Worker's Compensation Division to require self-insured employers and insurance carriers to submit all or selected information in reports or amendments to reports to be filed via electronic, magnetic or other media satisfactory to the Worker's Compensation Division. Under the current rule self-insured employers and insurance carriers may request to submit required reports electronically but are not required to do so. This amendment will allow the Worker's Compensation Division discretion to require electronic reporting to help the self-insured employer or insurance carrier to meet reporting requirements. DWD 80.02(3m) of the Wisconsin Administrative Code.

- 6. Payment of Permanent Disability.** DWD 80.52 of the Wisconsin Administrative Code will be created to establish when a payment for compensation for permanent disability must begin in cases in which the self-insured employer or insurance carrier concedes liability but disputes the extent of permanent disability. Under this rule payment is to begin (1) within 30 days after the self-insured employer or insurance carrier receives a report which provides a permanent disability rating or, (2) within 30 days after receiving a report from an examination performed under s. 102.13(1)(a), Wis. Stats., in the amount of permanent disability found as a result of the examination and, (3) if no examination was previously performed the self-insured employer or insurance carrier must give notice of a request for an examination within 30 days of receiving a report which establishes permanent disability and payment must begin within 90 days of the request for the examination in the event the examining practitioner's report is not available by that date.
- 7. Uninsured Employers Fund.** This amendment includes the right of the Worker's Compensation Division to seek reimbursement from a legally uninsured employers for payments made by the Uninsured Employers Fund for claims administration expenses. DWD 80.62(7)(a)3 of the Wisconsin Administrative Code.
- 8. Notice of Cancellation or Termination.** This amendment permits insurance carriers to give notice of cancellation or termination of insurance policies to the Wisconsin Compensation Rating Bureau by facsimile machine transmission, electronic mail or any electronic, magnetic or other medium approved by the Worker's Compensation Division. The current rule permits notice only by certified mail or personal service. The rule is amended to authorize notice by different means to comply with the amendment to s. 102.31(2)(a), Wis. Stats. DWD 80.65 of the Wisconsin Administrative Code.
- 9. Reasonableness of Fee Disputes.** This amendment requires self-insured employers and insurance carriers to raise disputes over liability or the extent of disability and give notice within 30 days after receiving a completed bill from a healthcare provider unless there is good cause for the delay in providing this notice. DWD 80.72(3)(a) of the Wisconsin Administrative Code.
- 10. Necessity of Treatment.** This amendment requires self-insured employers and insurance carriers to raise disputes over liability or the extent of liability and give notice within 60 days after receiving a bill from the healthcare provider unless there is good cause for the delay in providing this notice. DWD 80.73(3)(a) of the Wisconsin Administrative Code.

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Plain Language Summary of Wisconsin Act 172 - 2005

AMENDMENTS TO THE WORKER'S COMPENSATION ACT

PLAIN LANGUAGE SUMMARY 2005 WISCONSIN ACT 172

EFFECTIVE APRIL 1, 2006

1. **Employee Wellness.** Current law provides that an employee who is injured while voluntarily participating in a program designed to improve the employee's physical well being is not entitled to worker's compensation benefits. This amendment also excludes from coverage injuries sustained while an employee is engaged in a voluntary and uncompensated event or activity designed to improve the employee's physical well being. s.102.03(1)(c)3
2. **Temporary Help Agency.** This is a technical amendment by the drafter to modernize language in this subsection. s. 102.04(2m).
3. **Permanent Partial Disability.** The maximum benefit rates for permanent partial disability are increased for injuries occurring on or after the effective date in 2006 to \$252 and to \$262 for injuries occurring on or after January 1, 2007. s. 102.11(1)(intro.).
4. **Temporary Total Disability, Permanent Total Disability & Death Benefits.** The maximum benefit rate for temporary total disability, permanent total disability and death benefits will be 110 percent of the state's average weekly earnings as determined under s. 108.05, Wis. Stats. This amendment makes permanent the use of 110 percent of the state's average weekly earnings to establish these benefit rates. s.102.11(1)(intro.).
5. **Final Practitioner's Report.** Under this amendment a treating practitioner may charge a reasonable fee for completing a final report, but cannot require pre-payment of the fee, and an insurer or self-insured employer can dispute the reasonableness of a fee charge for completion of a final report through the reasonableness of fee dispute resolution process. s.102.13(2)(c).
6. **WC Treatment Guidelines.** The Department is authorized to promulgate rules to establish treatment guidelines to be applied in resolving necessity of treatment disputes. ss.102.16(1m)(b),102.16(2m)(c) and. 102.16(2m)(g).
7. **Certified Reports from Practitioners & Experts.** This amendment clarifies that medical and vocational evidence in the form of certified reports admitted at hearings may be relied on by the Department in issuing orders without the necessity of the practitioner or expert appearing at the hearing. s.102.17(1)(d) 4.
8. **Certified Reports from Industrial Safety Specialists.** This amendment clarifies that certified reports from industrial safety specialists admitted at hearings may be relied upon by the Department in issuing orders without the necessity of the experts appearing at the hearings. s.102.17(1)(h).
9. **Elimination of the Statute of Limitations for Specified Traumatic Injuries.** There will no longer be a statute of limitations for injuries 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, any

- permanent brain injury or any injury causing the need for a total or partial knee or hip replacement, and the insurer or self-insured employer is responsible for payment. The amendment also adds the need for an artificial spinal disc as a traumatic injury covered under this subsection. s.102.17(4).
10. **Necessity of Treatment.** This amendment clarifies that the Department shall apply the treatment guidelines to be promulgated by rule in deciding necessity of treatment disputes in orders following hearings. s.102.18(1)(bg) 2.
 11. **Bad Faith.** The maximum penalty for bad faith is increased from \$15,000 to \$30,000 and if a bad faith penalty is imposed increased compensation under s. 102.22(1) or other interest cannot also be awarded for that event or occurrence. s. 102.18(1)(bp).
 12. **Payment of Orders on Appeal.** This amendment clarifies that a party ordered by the Department, LIRC or a court to pay compensation must pay that compensation while the case is on appeal when the only issue on appeal is liability between the employer and one or more insurance companies. s.102.23(5).
 13. **Self-insured Employers Liability Fund.** The Self-Insured Employers Liability Fund is made nonlapsible and the money in the fund may only be used for statutory purposes and not other state purposes. s.102.28(8).
 14. **Third Party Actions.** This is a technical amendment by the drafter to modernize language. s.102.29(1).
 15. **Professional Employer Organizations.** Professional Employer Organizations (PEOs) are required to provide the Department notice within ten (10) days after entering into an agreement with a client and 30 days notice before the termination date of the client agreement. s.102.31(2m).
 16. **Fees for Wrap-up Insurance.** This amendment requires that the money received by the Department for administering the insurance wrap-up projects be deposited into the worker's compensation operations fund. s.102.31(7).
 17. **Prompt Payment of Permanent Partial Disability.** Under this amendment an employee who is still in the healing period and has returned to work is eligible to receive payments for PPD that are based on minimum ratings established by Department rule. s.102.32 (6)(b).
 18. **Advancements.** This amendment provides that an employee or dependent can receive no more than three (3) advancements per calendar year. s.102.32 (6m).
 19. **Public Inspection & Copying of Department Records.** The restrictions on access to confidential records provided to the Department are extended to LIRC. The Department will be permitted to release confidential information to government agencies, educational institutions and non-profit research organizations with the assurance that information will not be re-released without authorization from the Department. s.102.33(2).
 20. **Surcharges & Interest.** With this amendment forfeitures will be changed to surcharges and payments will be redirected from the School Fund to the Work Injury Supplemental Benefit Fund. Interest will be charged at a rate of 1 per cent per month on any unpaid surcharges that remain unpaid after 90 days and the interest will also be deposited in the WISBF. s.102.35(1).
 21. **Travel Expense (Mileage).** This amendment codifies the Department's policy that injured employees receive mileage reimbursement for travel to obtain treatment at the same rate that state employees receive for mileage. s.102.42(2)(b).
 22. **Pharmacy Fee Schedule.** A pharmacy fee schedule is established that limits charges to the average wholesale price, plus a \$3.00 dispensing fee and applicable state and federal taxes. The use of generic drugs is encouraged and pharmacists are prohibited from balance billing employees for charges over the fee schedule amount. s.102.425.
 23. **Restricted Work in the Healing Period.** Under this amendment employees will not be eligible to receive compensation for temporary disability if they refuse an offer of suitable employment without reasonable cause; or if the employment was suspended or terminated by the employer because of a commission of a crime substantially related to the employment; or if the employment was suspended or terminated by the employer because of violation of the employer's drug policy in effect and enforced at

- the time of injury. s.102.43(9).
24. **Supplemental Benefits.** The maximum supplemental benefit rate is increased in two (2) steps. The initial step will increase the maximum rate from \$233 per week to \$ 321 per week for injuries occurring before January 1, 1985 and payable for weeks of disability beginning on the effective date of the amendment. The second step will increase the maximum benefit rate from \$ 321 per week to \$338 per week for injuries occurring before January 1, 1987 and payable for weeks of disability beginning January 1, 2007. s.102.44(1).
 25. **Payment to State Fund-Death Claims .** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insured employers for injuries resulting in death is increased from \$10,000 to \$20,000. s.102.49(5).
 26. **Payment to the State Fund-Dismemberment.** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insurers for injuries resulting in dismemberment is increased from \$10,000 to \$20,000. s.102.59(2).
 27. **Illegal Employment of Minors.** This amendment redirects the payments by employers for double and treble compensation penalties for the illegal employment of minors from the minor to the Work Injury Supplemental Benefit Fund. The amendment also provides the employer is no longer required to make any payment if the employer is misled in hiring the minor because of fraudulent written evidence of age presented by the minor. s.102.60.
 28. **Travel Expense (Mileage).** This amendment codifies the Department's policy that injured employees receive mileage reimbursement for travel to attend vocational rehabilitation training at the same rate state employees receive for mileage. ss.102.61 (1) and (1m)(c).
 29. **Primary &Secondary Liability.** This is a technical amendment by the drafter to modernize the language in this section. s.102.62.
 30. **Work Injury Supplemental Benefit Fund.** This amendment requires that payments of surcharges, interest on late surcharge payments, double and treble compensation due for the illegal employment of minors and interest on late payments of the operations assessment are to be paid into the Work Injury Supplemental Benefit Fund. s.102.65(1).
 31. **Barred Claims.** Under this amendment the specified traumatic barred claims will no longer be paid by the Work Injury Supplemental Benefit Fund and will become the liability of insurers and self-insured employers beginning with the effective date of the amendment. s.102.66(1) and (2).
 32. **Administrative Expenses & Interest.** The worker's compensation operations fund is established as a separate nonlapsible fund to be used only for statutory purposes and not for any other state purpose. The amendment also provides for interest at a rate of 1 per cent per month on any unpaid assessments that are not paid within 90 days with the interest payable to the Work Injury Supplemental Benefit Fund. s.102.75 (1m),(2) and (4).
 33. **Uninsured Employers Fund.** Several sections were amended. One amendment provided that the money in the Uninsured Employers Fund can be expended only for statutory purposes and cannot be used for any other purpose. The other amendments are of a technical nature by the drafter to correctly cite current statutes. ss.102.80 (1m), 102.81 (1)(a), 102.81(2) and 102.87(4).

(JTO 3/28/06)

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