

## WORKER'S COMPENSATION BENEFIT FUNDS UNDER THE WISCONSIN WORKER'S COMPENSATION ACT & AFFILIATED FUNDS

### 1. Work Injury Supplemental Benefits Fund (Sec. 102.65,<sup>1</sup> Wis. Stats.):

The Work Injury Supplemental Fund (WISBF) is a state fund that pays benefits to individuals or dependents under four different benefit programs:

- Supplemental benefits (Supplemental Benefit Fund)
- Additional death benefit for children (Childrens Fund)
- Preexisting disability, indemnity benefits (Second Injury Fund)
- Payment of certain barred claims (Barred Claims Fund)

The WISBF is funded through statutory assessments against insurance carriers and employers for specified injuries, such as dismemberments and death claims. The Worker's Compensation Division collects the assessments.

---

<sup>1</sup> Sec. 102.65, Wis. Stats., 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 nonlapsible 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 process, investigate, 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.

## 2. Supplemental Benefits – Maximum Limitations (Sec. 102.44,<sup>2</sup> Wis. Stats.):

If the employee is receiving the maximum weekly benefits 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.

---

<sup>2</sup> Sec. 102.44, Wis. Stats., Maximum 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 disability more than 24 months after the date of injury resulting from an injury that occurred prior to January 1, 2003, shall receive supplemental 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 disability subsequent to that date.

**(1)(am)** If the employee is receiving the maximum weekly benefits 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.

**(1)(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 continue. To receive reimbursement under this paragraph, an insurance 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 worker's compensation operations fund, and used to provide reimbursement 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 determined payable under subd. 2. in a calendar year is \$5,000,000 or less, the department shall pay that amount. If the amount determined 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.

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

**History:** 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2007 a. 185; 2009 a. 177, 206; 2011 a. 183, 257; 2015 a. 55, 180.

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

### **3. Childrens Fund – Additional Death Benefit for Children (Sec. 102.49,<sup>3</sup> Wis. Stats.):**

The Childrens Fund pays benefits primarily to minor dependent children of employees who died as a result of a work-related injury. Childrens Fund payments begin after the primary death benefit is paid. Childrens Fund payments are payable to each child in the amount of 10% of the primary death benefit and continue until the child reaches the age of 18. If the child is physically or mentally incapacitated, the payments may be continued beyond the 18th birthday, but payments may not continue for more than a total of 15 years.

---

<sup>3</sup> Sec. 102.49 Wis. Stats., Additional death benefit for children, state fund.

**(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.

**History:** 1971 c. 260 s. 92 (4); 1975 c. 147, 199; 1977 c. 195; 1979 c. 110 s. 60 (13); 1979 c. 278, 355; 1985 a. 83; 1991 a. 85; 1993 a. 492; 1997 a. 253; 2003 a. 144; 2005 a. 172; 2009 a. 28; 2011 a. 183; 2015 a. 55.

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

#### **4. Second Injury Fund – Preexisting Disability, Indemnity: (Sec. 102.59,<sup>4</sup> Wis. Stats.):**

Second Injury Fund payments are due to employees who sustain a primary work-related injury which entitles the employee to compensation for Permanent Partial Disability (PPD) of at least 200 weeks when the employee has or would have been entitled to at least 200 weeks of PPD for an injury which existed before the primary work-related injury.

PPD due for the primary claim must be fully accrued before payments are due from the Second Injury Fund. The pre-existing disability does not need to have resulted from a work injury and can result from non-work related injuries, including birth defects.

#### **5. Barred Claims Fund – Payment of Certain Barred Claims (Sec. 102.66,<sup>5</sup> Wis. Stats.):**

The Barred Claims Fund pays compensation to individuals for injuries resulting from occupational disease and certain specified serious traumatic injuries, which are meritorious but otherwise barred by the statute of limitations.

---

<sup>4</sup> Sec. 102.59 Wis. Stats., 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 that if it 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 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 or the employee's dependent or personal representative commences action against a 3rd party as provided in s. 102.29.

**(3)** All payments received under this section shall be deposited in the fund established by s. 102.65.

**History:** 1971 c. 148; 1971 c. 260 s. 92 (4); 1973 c. 150; 1975 c. 147; 1977 c. 195; 1981 c. 92; 1985 a. 83, 173; 1987 a. 179; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2011 a. 183.

**Cross-reference:** See also s. DWD 80.68, Wis. adm. code.

<sup>5</sup> 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 or 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).

**History:** 1975 c. 147; 1979 c. 278; 2001 a. 37; 2005 a. 172; 2011 a. 183; 2015 a. 55.

**Cross-reference:** See also s. DWD 80.06, Wis. adm. code.

**6. Department of Justice Representation – Attorney General Shall Represent State and Commission (Sec. 102.64,<sup>6</sup> Wis. Stats.):**

The Attorney General is required to defend all claims for benefits made against the Work Injury Supplemental Benefit Fund. The Attorney General also represents the interests of the WISBF when judicial collection action is required to collect the assessments needed to fund the WISBF.

---

<sup>6</sup> Sec. 102.64 Wis. Stats., 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) (fm), (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 any other party defendant 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; 1977 c. 195; 1979 c. 110 s. 60 (11); 1981 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.

## 7. Uninsured Employer Fund – Compensation for Injured Employee of Uninsured Employer (Sec. 102.81,<sup>7</sup> Wis. Stats.) and Uninsured Employer Payments (Sec. 102.82,<sup>8</sup> Wis. Stats.):

<sup>7</sup> Sec. 102.81 Wis. Stats., 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) 3. and (bp), 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 with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch. 16, except s. 16.753, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).
- (3)** An injured employee of an uninsured employer or his or her dependents may attempt to recover from the uninsured employer, or a 3rd party under s. 102.29, while receiving or attempting to receive payment under sub. (1).
- (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 employee'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 employee'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).
- (6)(a)** Subject to par. (b), an employee, a dependent of an employee, an uninsured employer, a 3rd party who is liable under s. 102.29 or the department may enter into an agreement to settle liabilities under this chapter.
- (b)** A settlement under par. (a) is void without the department's written approval.
- (7)** This section first applies to injuries occurring on the first day of the first July beginning after the day that the secretary files a certificate under s. 102.80 (3) (a), except that if the secretary files a certificate under s. 102.80 (3) (ag) this section does not apply to claims filed on or after the date specified in that certificate.

**History:** 1989 a. 64; 1995 a. 117; 2003 a. 144; 2005 a. 172, 253, 410; 2007 a. 97; 2009 a. 206; 2015 a. 55, 180.

**Cross-reference:** See also s. DWD 80.62, Wis. adm. code.

<sup>8</sup> Sec. 102.82 Wis. Stats., Uninsured employer payments.

- (1)** Except as provided in sub. (2) (ar), an uninsured employer shall reimburse the department for any payment made under s. 102.81 (1) to or on behalf of an employee of the uninsured employer or to an employee's dependents and for any expenses paid by the department in administering the claim of the employee or dependents, less amounts repaid by the employee or dependents under s. 102.81 (4) (b). The reimbursement owed under this subsection is due within 30 days after the date on which the department notifies the uninsured employer that the reimbursement is owed. Interest shall accrue on amounts not paid when due at the rate of 1 percent per month.
- (2)(a)** Except as provided in pars. (ag), (am) and (ar), all uninsured employers shall pay to the department the greater of the following:
1. Twice the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker's compensation insurance in the preceding 3-year period based on the employer's payroll in the preceding 3 years.
  2. Seven hundred and fifty dollars.
- (ag)** An uninsured employer who is liable to the department under par. (a) 2 shall pay to the department, in lieu of the payment required under par. (a) 2., \$100 per day for each day that the employer is uninsured if all of the following apply:
1. The employer is uninsured for 7 consecutive days or less.
  2. The employer has not previously been uninsured.
  3. No injury for which the employer is liable under s. 102.03 has occurred during the period in which the employer is uninsured.
- (am)** The department may waive any payment owed under par. (a) by an uninsured employer if the department determines that the uninsured employer is subject to this chapter only because the uninsured employer has elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).
- (ar)** The department may waive any payment owed under par. (a) or (ag) or sub. (1) if the department determines that the sole reason for the uninsured employer's failure to comply with s. 102.28 (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.
- (b)** The payment owed under par. (a) or (ag) is due within 30 days after the date on which the employer is notified. Interest shall 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.

**History:** 1989 a. 64, 359; 1991 a. 85; 1993 a. 81; 1995 a. 27 s. 9130 (4); 1997 a. 3, 38; 2003 a. 144; 2009 a. 206.

The Uninsured Employers Fund (UEF) pays worker's compensation benefits on valid worker's compensation claims filed by employees who are injured while working for illegally uninsured Wisconsin employers. When a compensable claim is filed, the UEF pays the injured employee worker's compensation benefits as if the uninsured employer had been insured.

The UEF applies only to injuries occurring on or after July 1, 1996. The UEF is not liable for injury claims occurring before July 1, 1996. Claims filed for injuries occurring before July 1, 1996 must be filed against the uninsured employer. The UEF is funded through penalties assessed by the Worker's Compensation Division against employers for illegally operating a business without worker's compensation insurance. The penalties are mandatory and non-negotiable. In addition, the department pursues reimbursement from each uninsured employer of benefit payments made by the UEF under section 102.81(1), of the Wisconsin Statutes, to the employee of that uninsured employer or to the employee's dependents. The UEF uses aggressive collection action, including warrants, levies, garnishment and execution against property, to secure satisfaction of penalty assessments and reimbursement of claims paid by the fund.

## **8. Self-Insured Employers Liability Fund – Insolvent Employers; Assessments (Sec.102.28(7),<sup>9</sup> Wis. Stats.):**

The Self-Insured Employers Liability Fund pays benefits to employees of employers who were self-insured by written order of the department at the time of injury, if the employer is unable to pay worker's compensation benefits in accordance with the Worker's Compensation Act. It is funded by statutory assessments made by the Worker's Compensation Division against all employers that are currently self-insured by written order of the department.

---

<sup>9</sup> Sec. 102.28(7)(a), Wis. Stats., Insolvent employers; assessments.

**(a)** If an employer who is 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).

**(d)** 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 an other purpose of the state.

**History:** 1973 c. 150; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 23, 54; 1975 c. 199; 1977 c. 195; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38, 39; 2003 a. 33; 2005 a. 172; 2015 a. 55, 180.

**Cross-reference:** See also ss. DWD 80.40 and 80.60, Wis. adm. code.

**9. Death Benefit – Law Enforcement and Correctional Officers, Fire Fighters, Rescue Squad Members, Diving Team Members, National or State Guard Members and Emergency Management Personnel (Sec, 102.475,<sup>10</sup> Wis. Stats.):**

This is a special death benefit payable for the work-related deaths of law enforcement and emergency response employees, including police officers, correctional officers, fire fighters, rescue squad members, diving team members, national or state guard members and emergency management personnel. The benefit paid is set at 75% of the death benefit due under Wisconsin Worker's Compensation Act (Chapter 102). The benefit is paid in a lump sum and is funded by general purpose revenue.

---

<sup>10</sup> Sec, 102.475 Wis. Stats., 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, diving team member, national guard member or state defense force member on state active duty as described in s. 102.07 (9) 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) (c), 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 between 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 for a primary death benefit is compromised, any claim under this section shall be compromised on the same proportional basis. The attorney general shall represent the interests of the state in case of such dispute.

**(5) Minors.** Benefits due to minors under this section may be paid as provided in s. 102.45.

**(6) 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.

**(7) 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.

**(8) Definitions.** As used in this section:

**(a)** "Correctional officer" means any person employed by the state or any political subdivision as a guard or officer whose principal duties are supervision and discipline of inmates at a penal institution, prison, jail, house of correction or other place of penal detention.

**(am)** "Diving team member" means a member of a legally organized diving team.

**(b)** "Fire fighter" means any person employed by the state or any political subdivision as a member or officer of a fire department or a member of a volunteer department, including the state fire marshal and deputies.

**(c)** "Law enforcement officer" 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.

**(dm)** "Rescue squad member" means a member of a legally organized rescue squad.

**(e)** "State" means the state of Wisconsin and its departments, divisions, boards, bureaus, commissions, authorities and colleges and universities.

**History:** 1975 c. 274, 421; 1977 c. 29 ss. 1029m to 1029s, 1650; 1977 c. 48, 203, 418; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 325; 1983 a. 98, 189; 1985 a. 29; 1987 a. 63; 1991 a. 85; 1993 a. 81; 1995 a. 247; 1999 a. 14; 2009 a. 28, 42; 2015 a. 55.

## **10. Wisconsin Insurance Security Fund (Chapter 646, Wis. Stats.):**

Although the Wisconsin Worker's Compensation Division does not administer or have jurisdiction over the Wisconsin Insurance Security Fund, the Fund plays an integral role in paying worker's compensation claims of insolvent insurance carriers. Therefore, the Fund is included in this document as a Fund affiliated with the Wisconsin Worker's Compensation Program.

Every state has a safety net to protect insurance consumers from financial loss in the instance that a company becomes insolvent. This safety net is called a "guaranty fund." Guaranty funds are established by state law and are composed of licensed companies in the state. They pay the claims of policyholders and other claimants of an insolvent insurance company. The money to pay the claims against the insurance company comes from assessments made by the Insurance Security Fund against all insurance company members of the guaranty fund.

Wisconsin's guaranty fund is called the Insurance Security Fund (Fund). Created by state law under Chapter 646, Wis. Stats., it is funded by assessments of insurers licensed to do business in Wisconsin. The scope and purpose of the Fund is defined under sec. 646.01<sup>11</sup>, Wis. Stats. In general, the Fund protects residents for most claims of licensed insurers in liquidation, subject to a \$200 deductible amount. The Fund should not be relied upon to eliminate all risks of loss to insureds due to insurer insolvency. Some types of policies may not be fully covered and significant delays may occur while settling obligations in liquidation cases.

For questions regarding fund coverage and limitations, contact the Wisconsin Insurance Security Fund by mail at 2820 Walton Commons Lane, Suite 135, Madison, WI 53718-6797 or by phone at (608) 242-9473. Find more information online at: <http://www.wilifega.org/>

---

<sup>11</sup> 646.01 Scope and purposes.

- (1) Scope.
- (a) *General.* This chapter applies to:
1. All kinds and lines of direct insurance, except as provided in par. (b).
  2. All insurers authorized to do business in this state except:
    - a. Fraternal that are not health maintenance organization insurers.
    - b. Assessable mutuals, including town mutuals.
    - c. Mutual municipal insurers under s. 611.11 (4).
    - e. Limited service health organization insurers.
    - f. Miscellaneous insurers and motor clubs under ch. 616.
    - g. State insurance funds under chs. 604 to 607.
    - h. Risk retention groups.
    - i. Service insurance corporations that offer only dental or vision care.
    - j. Nondomestic insurers that have not obtained a certificate of authority to do business in this state and that are doing business under s. 618.41 or 618.42.
    - k. Risk-sharing plans under ch. 619.
    - l. The patients compensation fund under s. 655.27.
- (b) *Exceptions.* This chapter does not apply to any of the following:
1. Any portion of a life insurance policy or annuity contract that is not guaranteed by the insurer or under which the risk is borne by the policy or policyholder.
  2. Title insurance.
  3. Surety bonds, fidelity bonds and any other bonding obligations.
  4. Bail bonds.
  5. Mortgage guaranty, financial guaranty and other forms of insurance offering protection against investment risks.
  6. Ocean marine insurance.
  7. Credit insurance.
  8. Product liability or completed operations liability insurance, and comprehensive general liability including either of these coverages, provided to a risk purchasing group or a member of a risk purchasing group.
  9. Any self-funded, self-insured, or partially or wholly uninsured plan of an employer or other person to provide life insurance, annuity, or disability benefits to its employees or members to the extent that the plan is self-funded, self-insured, or uninsured.
  10. Any liability for dividends or experience rating credits payable after the date of entry of the order of liquidation under an insurance or annuity contract, and any fees or allowances due any person, including the policyholder, in connection with service to or administration of the contract.
  11. Any warranty or service contract.
  - 11m. Any contractual liability policy that is issued to a warrantor, warranty plan, warranty plan administrator, or service contract provider and that provides coverage of any liability or performance arising out of or in connection with a warranty or service contract.
  12. Municipal bond insurance.
  13. Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.
  14. A policy issued by an insurer to, or a contract entered into by an insurer with, a care management organization, as defined in s. 46.2805 (1), or the department of health services or any other governmental entity under any state law to provide prepaid health care to medical assistance recipients.
  15. An unallocated annuity contract.
  16. A contractual agreement that obligates an insurer to provide a book value accounting guarantee for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, neither of which is an affiliate of the insurer.
  17. Any liability under a policy or contract to the extent that it provides for interest or other changes in value that are to be determined by the use of an index or other external reference stated in the policy or contract and to the extent that the interest or other changes in value have not been credited to the policy or contract as of the date of the entry of the order of liquidation and are subject to forfeiture. If a policy's or contract's interest or other changes in value are credited less frequently than annually, for purposes of determining the values that have been credited and that are not subject to forfeiture, the interest or change in value determined by using the procedures specified in the policy or contract will be credited as if the contractual date of crediting interest or other changes in value was the date of entry of the order of liquidation and will not be subject to forfeiture.
  18. The deductible, self-funded, or self-insured portion of a claim under a liability or worker's compensation insurance policy, regardless of the timing or method provided in the policy, endorsement, or any other agreement for payment of the deductible, self-funded, or self-insured amount by the insured. This subdivision does not apply to a worker's compensation insurance policy if the insured under the policy is a debtor under 11 USC 701, et seq., as of the deadline set by the liquidator for filing claims against the insolvent insurer.
  19. A policy issued by an insurer to an enrollee under Title XVIII of the federal social security act, 42 USC 1395 to 1395ccc, or Title XIX of the federal social security act, 42 USC 1396 to 1396v, or a contract entered into by an insurer with the federal government or an agency of the federal government under Title XVIII or Title XIX of the federal social security act, to provide health care or prescription drug benefits to persons enrolled in Title XVIII or Title XIX programs.
- (2) Purposes. The purposes of this chapter are:
- (a) To maintain public confidence in the promises of insurers by providing a mechanism for protecting insureds from excessive delay and loss in the event of liquidation of insurers and by assessing the cost of such protection among insurers; and
  - (b) To provide where appropriate for the continuation of protection under policies and supplementary contracts of life insurance, disability insurance and annuities.

**11. How can I get more information about coverage under the Wisconsin Worker's Compensation Act?**

Answer: Contact the Wisconsin Department of Workforce Development - Worker's Compensation Division, Bureau of Insurance Programs in-person at GEF-1 State Office Building, Room C100, 201 E. Washington Avenue, Madison by mail at P.O. Box 7901, Madison, WI 53707-7901 or by phone at (608) 266-3046. The Division also offers information online at: <http://dwd.wisconsin.gov/wc>

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 another language.