

WISCONSIN



DWD

Legal Updates

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Legal Updates Overview

- Updates related to COVID-19
- First responders and post-traumatic stress disorder (PTSD)
- Employee leasing
- Timeliness of health care bill submissions
- Work Injury Supplemental Benefit Fund (WISBF)
- Critical worker presumption
- Other legal updates
- Questions



COVID-19 and Worker's Compensation

- Updated COVID-19 Worker's Compensation data
- Q & A about COVID-19 and Worker's Compensation on DWD website
- Worker's Compensation COVID-19 Public Information
<https://dwd.wisconsin.gov/covid19/public/wc.htm>



COVID-19 Vaccinations

- Can employers require employees to receive a COVID-19 vaccination as a condition of employment?
- The Equal Employment Opportunity Commission (EEOC) has issued revised guidance on vaccinations that, in general, mandatory COVID-19 vaccinations can be required by employers, but the law gives protection to those who refuse due to disability or on religious grounds.
- What effect if there is a state law prohibiting employers from requiring COVID-19 vaccinations?



COVID-19 Vaccinations (cont.)

- Are employees who experience a bad reaction to a COVID-19 vaccination eligible to receive worker's compensation benefits?
- An employee who experiences a bad reaction to a COVID-19 vaccination may be eligible for worker's compensation benefits if the employer directed or encouraged the employee to have the vaccination.



COVID-19 Vaccinations (cont.)

- The Countermeasures Injury Compensation Program (CICP) is a federal program that may help pay the costs of medical care for people who have been seriously injured by certain medicines or vaccines, including the COVID-19 vaccine.
 - A claim must be submitted to the CICP within one (1) year of receiving the vaccine.
 - More information about the CICP is available at www.hrsa.gov/cicp/ or call 1-855-266-2427.



Wisconsin COVID-19 Liability Immunity Law

- Section 895.476, Wis. Stats., (2021 Wis. Act 4) provides that beginning March 1, 2020, all entities, including employers, are immune from civil liability for the death or injury to any individual contracting COVID-19 in the course of or through the performance or provision of the entity's functions or services.
 - The civil immunity provision does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct.
- Does this apply to WC cases?
 - We do not believe s. 895.476, Wis. Stats., applies to WC cases.



Legislative Changes to ch. 102, Wis. Stats.

- 2021 SB-11 recently passed both houses of the Legislature and is expected to be signed by Governor Evers.
- SB-11 contains the following amendments to ch. 102, Wis. Stats:
 - The unusual stress requirement will no longer be necessary for law enforcement officers and full-time firefighters diagnosed with PTSD.
 - The statute of limitations will be amended to clarify that it applies to all parties to a WC claim including employers, insurance carriers, and other entities.



Legislative Changes to ch. 102, Wis. Stats.

- An employer or client may enter into an employee leasing agreement with a Professional Employer Organization (PEO) or employee leasing company and elect to provide WC insurance coverage for the leased employees under the terms of an employee leasing agreement.
- Within 30 days of a request, health care providers will be required to provide WC insurance carriers and their representatives with a copy of the complete itemized billing statement on a standard billing format required by the federal government.



Legislative Changes to ch. 102, Wis. Stats.

- WC insurance carriers and self-insured employers will be authorized to make advance or lump sum payments into the WISBF subject to a 5% interest credit.
- The WISBF will not be permitted to collect death benefits when there is a violation of the employer's drug/alcohol policy that was causal to the employee's death and there are no surviving dependents.



Proposed Changes to ch. 102, Wis. Stats.

- 2021 AB-31 was introduced earlier in the year to create s. 102.03 (7), Wis. Stats.
 - AB-31 creates a rebuttable presumption that COVID-19 is work-related for “critical workers.”
 - “Critical worker” is defined as a position that is critical under s. 323.19 (3p), Wis. Stats.
 - The rebuttable presumption applies to injury dates beginning with the effective date and ending on December 31, 2021.



Proposed Changes to ch. 102, Wis. Stats. (cont.)

- 2021 AB-31 was introduced earlier in the year to create s. 102.03 (7), Wis. Stats.
 - For the rebuttable presumption to apply, there must be a diagnosis of COVID-19 by a physician or a positive test result.
 - The presumption may be rebutted by specific evidence showing the COVID-19 was caused by exposure to COVID-19 outside of work for the employer.



Other Legal Updates

- Worker's Compensation Advisory Council
- DWD 80.32 minimum Permanent Partial Disability (PPD) ratings
- DWD 81 WC Treatment Guidelines



Poll Question

Updates regarding worker's compensation law and policies are most easily found by:

1. Sending a written request for the desired information to the DWC.
2. Checking the DWC website under the insurance letters tab.
3. Calling the DWC and asking to speak with a Bureau of Legal Services representative.
4. Scouring state newspapers for articles that reference the DWC.



Questions?



Important Contact Information

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