

STATE OF WISCONSIN



Department of Workforce Development

Fall 2024 Legal Update

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Administrative Law Judges, Bureau of Legal Services

Legal Update

We have good and bad news

There are no legal updates!



WCAC Public Hearing

The next Worker's Compensation Advisory Council (WCAC) public hearing will be:

December 10, 2024 – 3:00 pm to 6:00 pm

Find more details at:

<https://dwd.wi.gov/wc/councils/wcac/meetings.htm>

Send written comments to WCAdvisoryCouncil@dwd.wisconsin.gov or

John Dipko, Chair
Worker's Compensation Advisory Council
201 E Washington Avenue
Madison, WI 53703



Topics for Today

- What's on Your Mind?
- Litigated or Not?
- IME Notices
- Denials
- Accrual of PPD
- Death Benefits



When Is a Claim Litigated?

For reporting purposes, a claim does not change to litigated status until a Hearing Application or a Compromise agreement is received and entered into the DWD claims management system.

Reminders:

- Continue to file all required reports (WKC-13s, WKC-13-A1s, final medical reports) through EDI or Pending Reports, and imaging server.
- File [paper forms](#), once litigated.



When Is a Claim Litigated? (cont.)

Once the Hearing Application has been served, **FAX your answer (WKC-19-DHA) to DWD.**

DWD Litigated Fax Number
608-260-3053



IME Notice Letters

Notice must provide all of the following information to the employee:

- Proposed date, time, and place of the exam, identity and specialty of the examiner.
- Procedure for changing the proposed date, time, and place of the IME.

Notice must also advise the employee of all of the following rights:

- To have their provider present, at their own expense.
- To receive a copy of all IME reports, immediately upon carrier's receipt of such reports.
- To have an interpreter present, at their own expense.
- To have one observer of their choice present.



IME Notice Letters (cont.)

- Before the exam, send the employee all necessary expenses, including mileage.
 - If the employee is not on TTD and misses work to attend the IME, they are entitled to full replacement for any lost wages.
- Can't require employee to travel more than 100 miles as the crow flies to attend an exam, unless they are treating beyond the 100 miles.
- Failure to follow these requirements means the employee does not have to attend the IME.
- See § 102.13 (1) (b), & (4), Wis. Stats.



Obstruction of IME

If, after proper and complete notice, the employee does not attend or obstructs an IME:

- Their right to begin or maintain their claim with the DWD/DHA for benefits may be suspended.
- A **no show** does not equal **stop payments**.

If, after proper notice, the employee does not attend or obstructs an IME **and** an ALJ has ordered them to attend:

- Then you can suspend benefits until they do attend.



Denials

Must be in writing:

- Can't I just send a text?
- What about an email?
- Do I need to copy in anyone else?
 - Best practice: send a copy of your denial letter to DWD. See § DWD 80.02 (2)(g) and (2m).



Denials (cont.)

What must be included in the denial letter?

- The SPECIFIC basis for the denial and WHAT is being denied
- The employee's right to a hearing
- If there is no concession but you are still investigating, then you must indicate what support or information is needed or missing



PPD Accrual

PPD accrual during intermittent periods of TTD/TPD

- If TTD/TPD ends, begin PPD payments when you know there will be PPD based on a minimum rating under §§ DWD 80.32 or DWD 80.33 (minimum ratings per rule.)
- Provision benefits both worker and employer/insurance carrier as it minimizes potential penalties and doesn't extend the statute of limitations.
- See § 102.32 (6) (e), Wis. Stats.



Death Benefits

Common considerations for death benefits

- How much?
- What rate?
 - How to pay?
- Who is entitled to be paid?
 - Total dependents
 - Partial dependents
- PTD vs PPD benefits
- Accrued versus unaccrued benefits



Death Benefits (cont.)

How much:

- When an employee dies as a result of a work injury, death benefit is 4 times average annual earnings (50 x AWW), subject to a minimum and maximum cap. See §§ 102.11(1) and (2), 102.46, Wis. Stats.
- If employee is under 27 at time of injury, presumed maximum benefit. See § 102.11(1)(g), Wis. Stats.



Death Benefits (cont.)

What rate and how to pay:

- Unless otherwise ordered by DWD or DHA, death benefits paid monthly based on weekly installments at TTD rate, 2/3rds of AWW, up to maximum.
- See § 102.48(3), Wis. Stats.



Death Benefits (cont.)

Most common recipients:

- Surviving spouse, or
- Child or children under 18, or
- Unestranged surviving parent or parents, and
- Work Injury Supplemental Benefit Fund (WISBF)

See § 102.51 (1), (2), and (5) Wis. Stats.



Dependency

Total dependents, presumed (§ 102.51(1)(a), Wis. Stats)

- Spouses or domestic partners who are living with and dependent upon the deceased at the time of death.
 - “Living with”: no legal separation or estrangement.
- Children under 18, or over 18 if incapacitated, who are living with and dependent upon the deceased at the time of death, if there is no surviving dependent parent.
- Once total dependency is established, all other potential dependents excluded. (§ 102.51(1)(b), Wis. Stats.)



Dependency (cont.)

Total dependents in fact

- If a dependent is not on the list of presumed total dependents, under 102.51(1)(a), Wis. Stats., they must prove that the deceased provided their primary source of income.
 - Proof: birth, marriage or domestic partnership certificates, tax records, bank statements.
- If more than one total dependent established, under § 102.51(3), Wis. Stats., Department can divide the benefit according to a relative apportionment it determines just.



Dependency (cont.)

Partial dependents

- Parents, siblings, grandparents, grandchildren.
- If unestranged parents received less than \$500 support in the year before death of their deceased child, they get \$6,500.
- Otherwise, Department or Division will determine benefit for all partial dependents.



Dependency (cont.)

Partial dependents (§ 102.48 (1),(2), Wis. Stats.)

- Standard: but for the injury, what fair and just sum would the partial dependent reasonably have anticipated to receive in support from the deceased.
- Maximum amount payable: the greater of
 - Half of the death benefit, or
 - Four times the contribution the deceased made to the dependent in the year before death.



Death Benefits - PTD

PTD benefits

- If injury causes PTD, when the employee dies from any cause, there may not be any death benefits payable, depending upon how much PTD has been paid during the employee's lifetime. (See death benefit cap under § 102.46, Wis. Stats.)
- If lifetime PTD benefits plus death benefit exceed 1,000 wks x TTD rate, no death benefit is due.



Death Benefits – PTD (cont.)

PTD benefits

- Burial expenses are paid first out of any death benefits due, unless the death was a result of the work injury.
- See § 102.47(1), Wis. Stats.



Death Benefits - PPD

Unaccrued PPD benefits convert to death benefits

- Arises when employee dies from a cause unrelated to work injury when disability benefits for work injury are not yet exhausted.
- PPD/LOEC may have been assigned or minimum PPD per Administrative Code may be appropriate.
- Also applicable to a claim for benefits to the second injury fund.
- See §102.48, Wis. Stats.



Death Benefits – PPD (cont.)

Accrued versus unaccrued PPD benefits

- Accrued:
 - Any amounts due but not yet paid to employee before their death.
 - Accrued benefits go to the deceased employee's estate.
- Unaccrued compensation
 - Any amounts that have not yet become due.
 - These benefits go to dependents or if none, to WISBF.



Death Benefits – PPD (cont.)

- Unaccrued PPD benefits are first used for burial expenses, subject to maximum limitation under § 102.46, Wis. Stats.
- Any remaining PPD benefits paid monthly to dependents.
- If no dependents, then paid to WISBF.
- See §§ 102.47, 102.48, Wis. Stats.



Possible Additional Death Benefits

Children's Fund

- Special state fund that pays 10% of the death benefit, after the primary death benefit is paid, if the wholly dependent child is under 18, or physically/mentally incapacitated. Continues until the dependent reaches age 18, subject to a maximum of 15 years.
- If the deceased worker was under 18 years old, there is an increase of up to \$1,500.00 in the burial expense allowance.
- See § 102.49, Wis. Stats.



Possible Additional Death Benefits (cont.)

- Per § 102.475, Wis. Stats, Department pays a special benefit to full dependents of deceased employees in the following protective occupations:
 - Law enforcement and correctional officers,
 - Fire fighters,
 - Rescue squad and diving team members,
 - Members of National or State Guard, and
 - Emergency management personnel
- Benefit is the greater of 75% of the death benefit or \$50,000.00.



Questions?

Administrative Law Judges

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Important Contact Information

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