

STATE OF WISCONSIN



Department of Workforce Development

Increases and Reductions

PHILIP ROBERTS

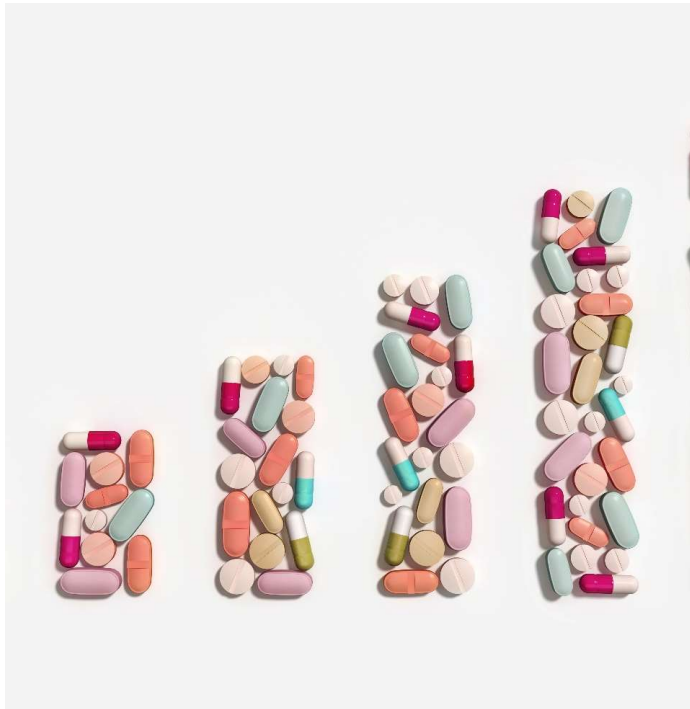
Dispute Resolution Specialist

The Wisconsin Worker's Compensation Act allows for instances where indemnity payments to the injured worker can be increased or reduced based on qualifying events.

Adjustments to compensation are by request and are not automatically applied. To facilitate a request, submission of supporting documentation is necessary.



Increased Compensation



- Two increases in compensation are provided:
 - An injury causing substantial **disfigurement** which affects future employment.
 - **Safety violations** due to the fault of the employer.
- These adjustments are typically requested by the injured worker.
 - However, adjusters may also forward documentation about these increases to the department.



Disfigurement

- Injured workers must be evaluated by an ALJ, who will determine if further action is appropriate.
- § 102.56(1), Wis. Stats. provides the criteria that an ALJ will use to increase the award for injuries causing permanent cosmetic injury.
- Maximum award for disfigurement is one year's wages.
- § 102.56(2) states no disfigurement benefits will be allowed if the injured worker remains employed at the original employer at pre-injury wage or higher.



Criteria for Disfigurement Benefits

- Disfigurement benefits are generally allowed for areas of the body that are exposed in the normal course of employment.
- ALJ to determine disfigurement allowed based on these criteria:
 - Age,
 - Education,
 - Training
 - Present and previous experience and earnings, and
 - Likelihood of future suitable occupational change.



Safety Violation Increase

- § 102.57 provides for an increase of 15% in compensation and death benefits, up to a maximum of \$15,000.
- Injury must be caused by the failure of the employer to comply with any statute, rule, or order of the Department of Safety and Professional Services.
- Failure to reasonably enforce safety standards constitutes failure to comply with them.



Reduced Compensation

- Two decreases in compensation provided:
 - **Safety violations** due to the fault of the injured worker.
 - Violation of the employer's **drug or alcohol policy** being directly responsible for the injury.
- DWC will not apply the reduction until the adjuster submits a request with all the proper supporting documentation.
- As of November 2024, processing time for these requests is about four to six weeks.

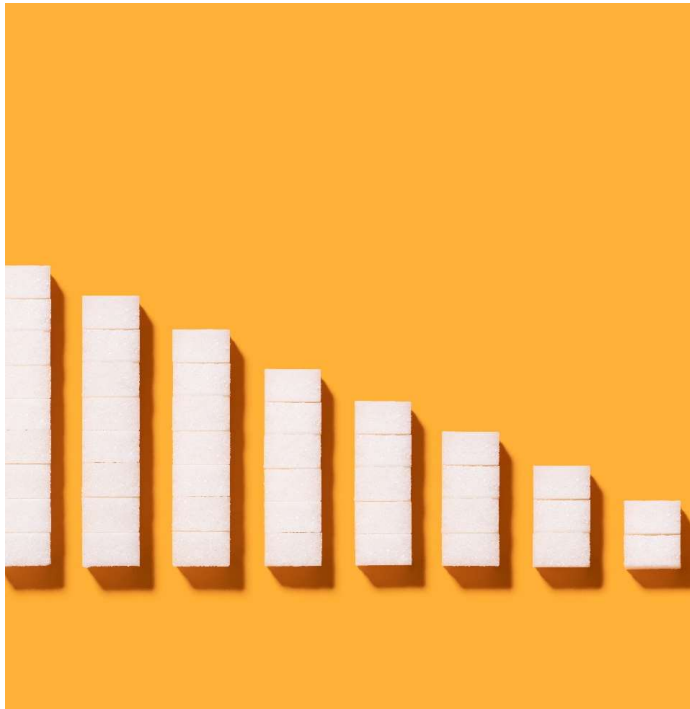


Safety Violation Decrease

- § 102.58(1) provides a decrease of 15% to compensation and death benefits, up to a maximum of \$15,000.
- Must be due to misuse of safety devices required by statute, rule, or order of the Department of Safety and Professional Services.
- Employee must have previously acknowledged the safety standard.



Safety Violation Decrease



- Employers must provide documentation of previous reasonable enforcement the safety standard.
- Safety devices must be in good working order and regularly used by all workers.



Drug or Alcohol Decrease

- § 102.58(2) provides a total bar to indemnity and death benefits if the employee's injury is caused by their violation of the employer's drug or alcohol policy.
- There must be a medical opinion determining a direct causation between intoxication and injury.
- The employer's drug and alcohol policy must predate the injury.
- Insurers are still liable for medical expenses, incidentals, and medication treatments.



Documentation

- The employer's policy or government rule that was violated.
- Records of previous reasonable enforcement of the policy.
- Statement(s) showing the injured worker was in violation of the policy, e.g. write-up or accident report.
- In the cases of alcohol, drug, or failure to use a safety device, a medical opinion linking causation of the injury to violation of that policy.





Questions?

Phil Roberts, DRS
(608) 264-8783

Philip.Roberts@dwd.wisconsin.gov

