

STATE OF WISCONSIN



Department of Workforce Development

Spring 2025 Legal Update

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Administrative Law Judges, Bureau of Legal Services

Topics for Today

- Legal Updates: WC Advisory Council and Administrative Updates
- ADR from an ALJ Perspective
- Attorney Representation
- Reporting Reminders and Best Practices
- Escalated TTD Rate



Legal Update

- The Worker's Compensation Advisory Council (WCAC) held a public hearing on December 10, 2024 to obtain recommendations for changes to § 102, Wis Stats. and Chs. DWD 80-81 Wis. Admin. Code.
- Six people appeared at the public hearing to propose changes to the law and administrative rules; several others submitted written comments.
- Audiologists recommended that Doctors of Audiology be authorized to sign WKC-16-B medical reports for hearing loss claims.



Legal Update (cont.)

- Four people recommended that the same WC coverage for PTSD that is provided to full-time fire fighters and law enforcement in 2021 Wis. Act 29 be extended to all EMS personnel, part-time fire fighters, and volunteer fire fighters.
- Health care practitioner made recommendations for the following:
 - Examinations under § 102.13(1) Wis Stats.,
 - Choice of treating practitioner under WI Stat §102.42, and
 - Adopting the proposed minimum PPD ratings and creating WC treatment guidelines for lower extremity injuries.



Legal Update (cont.)

Three statements of scope recommending rule updates to Chs. DWD 80 and 81 of the Wisconsin Administrative Code are pending.



Legal Update (cont.)

Statement of Scope SS 113-23

- The minor and technical recommended changes are to update the Administrative Code with changes previously made in the law.



Legal Update (cont.)

Statement of Scope SS 113-23

- Assessments and coverage of the Self-Insured Employer Liability Fund under § DWD 80.40,
- Self-insurance approval process for local governmental units with independent taxing authority under § DWD 80.60(3), and
- Reasonableness of fee disputes database standard deviation under § DWD 80.72(2).



Legal Update (cont.)

Statement of Scope SS 114-23

- To review and update minimum ratings for permanent partial disability (PPD) in § DWD 80.32 of the Wisconsin Administrative Code.



Legal Update (cont.)

Statement of Scope SS 114-23

- Per Section 102.44 (4m) Wis. Stats., the minimum PPD ratings in s. DWD 80.32 of the Wisconsin Administrative Code are to be reviewed and revised every eight (8) years to reflect advances in the science of medicine.
- At the February 11, 2025 WCAC meeting, the Health Care Provider Advisory Committee (HCPAC) presented their recommendations to update the minimum PPD ratings.



Legal Update (cont.)

Statement of Scope SS 114-23

- HCPAC's recommendations and related documents can be found at:

<https://publicmeetings.wi.gov/view/a2a7a6ae-c78b-4f5d-afcb-577a0027abb4>



Legal Update (cont.)

Statement of Scope SS 115-23

- To update the worker's compensation treatment guidelines in ch. DWD 81 of the Wisconsin Administrative Code, used exclusively for resolving disputes over the necessity of treatment provided to injured employees.
- WCD and HCPAC are working on this process.



WCAC Progress

- The WCAC continues to meet to develop Agreed Upon Bill(s) for submission to the Legislature in this biennium.
- Next WCAC meeting will be **April 29, 2025**.
- You are welcome to submit any suggestions to the WCAC at WCAdvisoryCouncil@dwd.wisconsin.gov.



Alternative Dispute Resolution

- While the claim is in ADR, contact DWC and not OWCH.
 - Unrepresented injured worker.
 - No notice of prehearing conference.
- Key points for DWD ALJs when reviewing proposed compromise agreements.
 - Is there an appropriate dispute for a Full and Final or Limited compromise?
 - Any liens for short/long term disability or group health? Have they been considered?
 - Any Medicare involvement? Have Medicare's interests been considered?



Contact Us

Please use the DWD dedicated litigated fax number: **(608) 260-3053** for documents that need an ALJ's attention or for documents associated with an ADR claim.

- DWD is the record custodian for all WC records. Documents faxed to DWD are imaged and routed to the appropriate file. Documents for litigated claims are usually processed within 24 hours. Once a document is imaged, it can be viewed by all DWD and OWCH staff.
- Questions about ADR.



Attorney Representation

- Attorney representation alone does not make a claim litigated. Keep your reporting current until you receive a Notice of Hearing Application.
- Once you have notice of representation, even if there is no dispute on benefits being paid, withhold attorney fees unless the attorney has notified you that no fees are being claimed.
- Do not release withheld fees until ALJ approves.
- Conceded claims: injured worker's attorney can request a 10% fee, up to a maximum of \$250.



Best Practices

- Don't report a duplicate claim if there's already one in active litigation.
- When submitting a compromise, check to see if we already have the claim in our system.
- Don't just lump conceded but unpaid PPD into a compromise. If you do, at least tell us how much has been paid.
- Don't report the master policy holder as the employer.



Best Practices (cont.)

- When the Insurance Carrier or Claims Handling Organization changes their address, tell us through appropriate channels.
- Provide a TPD worksheet if submitting a paper WKC-13 so we don't have to guess the rate you are using.
- Don't get creative with your denials or use Admin Code provisions that do not apply to WC.
- Don't ignore our letters or requests for information.



Escalated TTD Rate

When is the TTD rate escalated?

- Per § 102.43(7), if an IW has a renewed period of temporary disability more than two years from the date of injury, the TTD rate is escalated.
- The IW must have returned to work for at least 10 days between the periods of disability, except in the case of a retraining claim.
- Escalated TTD is not the same as Expansion.
 - Expansion applies to the AWW.



Escalated TTD rate (cont.)

To calculate escalated TTD:

- Look to the DWD's wage and rate chart: [Historical Wage/Rate Information](#) (1911 – 2025)
- The TTD rate for the renewed period of disability will increase in the same proportion as the max TTD rate.
- If there are multiple renewed periods of disability in a claim, the TTD rate can escalate more than once.



Escalated TTD Rate, Retraining

Example:

- IW's TTD rate for June 1, 2021 date of injury is maximum: \$1,094.00
- Receives TTD from June 2, 2021 – Nov. 14, 2023.
- IW begins retraining program in fall 2024. TTD rate escalated to new max TTD rate: \$1,296.00.
- Does TTD rate escalate again for spring semester of 2025?
- Hint: see § 102.43(7)(c)3, Wis. Stats.



Escalated TTD Rate: Chris

- Chris sustained a traumatic knee injury on Nov. 9, 2011.
- Three knee surgeries with various healing periods after each surgery.
- Carrier conceded and paid lost time benefits after each surgery based on TTD rate of \$600.
- EOH reached April 30, 2013 with 25% PPD to knee.
- Chris returned to work at his employer for at least 10 days between each surgery and after release from care in 2013.



Escalated TTD Rate: Chris (cont.)

- PPD fully accrued in February 2014.
- Aug. 19, 2019: Chris had total knee replacement, which was the result of this 2011 injury.
- He entered a new healing period on date of surgery.



Escalated TTD Rate Questions: Chris

- After any of the first three knee surgeries, would TTD rate escalate?
- Would TTD rate escalate after 2019 total knee replacement?
- If Chris received \$600 a week in TTD benefits in 2011, when maximum TTD rate was \$820, what would his TTD rate be in 2019, when maximum TTD rate was \$1,016?
- If Chris needs a revision total knee surgery on March 14, 2021, do we escalate his TTD rate again? What if the surgery occurs on May 17, 2022?



Escalated TTD Rate: Ellen

- Ellen sustained an occupational low back injury on June 3, 2022.
- L5-S1 fusion surgery on Feb. 15, 2023.
- Carrier conceded and paid lost time benefits at maximum rate of \$1,159.00 until May 25, 2023, when Ellen returned to work for her employer at her physical job.
- Carrier also conceded and paid 10% PTD.



Escalated TTD Rate: Ellen (cont.)

- Ellen's physician took her off work entirely on June 4, 2024.
- Another surgery on July 3, 2024: two level fusion from L4 - S1.
- Off work until Jan. 17, 2025 when she was rated at 20% PTD for second surgery.



Escalated TTD Rate Questions: Ellen

- Do we escalate Ellen's TTD?
- If so, what would be her new rate in 2024?
- What if Ellen's renewed period of TTD began on June 3, 2024?
- If Ellen returns to work for 1 week in January 2025, but is then taken off work, does her TTD rate escalate again?





Questions?



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Important Contact Information

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