

Table of Contents

PART I LIABILITY

CHAPTER 1

INTRODUCTION TO

WORKER'S COMPENSATION PRACTICE

- I. Wisconsin's Worker's Compensation Act [§ 1.1]**
 - A. Generally [§ 1.2]
 - B. Organization of the Worker's Compensation Division [§ 1.3]

- II. Representation in Worker's Compensation Cases [§ 1.4]**
 - A. Attorney Fees [§ 1.5]
 - B. Agents [§ 1.6]
 - C. Practice Suggestions [§ 1.7]

CHAPTER 2

EMPLOYMENT RELATIONSHIP

- I. Employers [§ 2.1]**
 - A. Generally [§ 2.2]
 - B. Withdrawing from Coverage [§ 2.3]
 - C. Insurance Requirements [§ 2.4]
 - D. Federal Preemption [§ 2.5]
 - E. Special Cases [§ 2.6]
 - 1. Partnerships and Joint Ventures [§ 2.7]
 - 2. Professional Employer Organizations [§ 2.8]
 - 3. Dual Employment [§ 2.9]

- II. Employees [§ 2.10]**
 - A. Generally [§ 2.11]
 - B. Test of Employment Relationship [§ 2.12]
 - C. Special Cases [§ 2.13]
 - 1. Independent Contractors [§ 2.14]
 - 2. Truckers [§ 2.15]
 - 3. Employees of Contractors Under [§ 2.16]

4. Loaned Employees [§ 2.17]
5. Volunteers [§ 2.18]
6. Persons Lending Emergency Assistance [§ 2.19]
7. Corporate Owner-Officers [§ 2.20]
8. Partners, Sole Proprietors, and Limited Liability Company Members [§ 2.21]
9. Members of Qualified Religious Sects [§ 2.22]

**CHAPTER 3
INJURY**

I. Generally [§ 3.1]

- A. Injury Defined [§ 3.2]
- B. Accidental Injury [§ 3.3]
- C. Occupational Disease [§ 3.4]
- D. Jurisdiction over Claim [§ 3.5]

II. Injury Sustained in Course of Employment [§ 3.6]

- A. Liberal Construction [§ 3.7]
- B. Presumption of Continuing Employment [§ 3.8]
- C. Personal Comfort Doctrine [§ 3.9]
- D. Act in Violation of Employer Directive [§ 3.10]
- E. Private Errand [§ 3.11]
- F. Momentary Deviation [§ 3.12]
- G. Horseplay [§ 3.13]
- H. Fights [§ 3.14]
- I. Intoxication [§ 3.15]
- J. Employer Premises [§ 3.16]
 1. Going and Coming [§ 3.17]
 2. Spilled-Over Danger [§ 3.18]
 3. Parking Lot [§ 3.19]
 4. Recreational Functions off Premises [§ 3.20]
 5. Work at Home [§ 3.21]
 6. Recreational Functions on Premises [§ 3.22]
- K. Travel [§ 3.23]
 1. Commuting [§ 3.24]
 2. Special or Overtime Trip [§ 3.25]
 3. Traveling Employee [§ 3.26]
 4. Carpooling [§ 3.27]
- L. Rescue [§ 3.28]

- M. Collecting Pay [§ 3.29]
- N. Returning to Premises After Separation from Employment [§ 3.30]
- O. Employer-Sponsored Program, Event, or Activity to Improve Physical Well-Being [§ 3.31]

III. Injury Arising out of Employment [§ 3.32]

- A. Statutory Language [§ 3.33]
- B. Positional Risk Doctrine [§ 3.34]
- C. Idiopathic Fall [§ 3.35]
- D. Intentionally Self-Inflicted Injuries [§ 3.36]
- E. Suicide [§ 3.37]
- F. As-Is Rule and Aggravation [§ 3.38]
- G. Compensable Reinjury [§ 3.39]
- H. Intervening Cause [§ 3.40]
- I. Aggravation by Malpractice [§ 3.41]
- J. Nontraumatic Mental Injury [§ 3.42]
- K. Causation in Occupational Disease Case [§ 3.43]
- L. Apportionment of Liability [§ 3.44]
- M. Hernia [§ 3.45]

PART II BENEFITS

CHAPTER 4

CALCULATING WAGE

I. Basis for Benefits [§ 4.1]

II. Average Weekly Wage [§ 4.2]

- A. Generally [§ 4.3]
- B. Full-Time Employment [§ 4.4]
 - 1. Calculation of Weekly Wage [§ 4.5]
 - 2. Valuation of Noncash Wage [§ 4.6]
- C. Part-Time and Seasonal Employment [§ 4.7]
 - 1. General Rule: Expansion to Full-Time Wage [§ 4.8]
 - 2. Exceptions to General Rule [§ 4.9]
 - a. Regularly Scheduled Class of Part-Time Employees [§ 4.10]
 - b. Restricted Availability for Employment [§ 4.11]
 - c. Regularly Scheduled Class with Restricted Availability [§ 4.12]

- D. Presumption of Maximum Earnings [§ 4.13]
 - 1. Persons Under Age 27 [§ 4.14]
 - 2. Volunteer Firefighters and Prisoners [§ 4.15]

CHAPTER 5

MEDICAL TREATMENT FOR INJURY

- I. Employer's Liability for Medical Expenses [§ 5.1]**
- II. Special Rules Relating to Prescription and Nonprescription Drugs [§ 5.2]**
- III. Disputes About Reasonableness of Fees and Necessity of Treatment [§ 5.3]**
- IV. Choice of Treating Practitioner [§ 5.4]**
- V. Unreasonable Refusal to Submit to Treatment [§ 5.5]**
- VI. Consequences of Unreasonable or Unnecessary Treatment [§ 5.6]**

CHAPTER 6

DISABILITY BENEFITS

- I. Generally [§ 6.1]**
- II. Temporary Disability [§ 6.2]**
 - A. Generally [§ 6.3]
 - B. Wage Loss [§ 6.4]
 - C. Three-Day Waiting Period [§ 6.5]
 - D. Healing Period [§ 6.6]
 - 1. Generally [§ 6.7]
 - 2. Mental Disability [§ 6.8]
 - 3. Healing Period Determined Retrospectively [§ 6.9]
 - E. Temporary Total Disability Benefits [§ 6.10]
 - F. Returning to Work with Limitations [§ 6.11]
 - G. Renewed Period of Disability [§ 6.12]

- H. Unemployment Insurance Overlap [§ 6.13]
- I. Group Benefit Overlap [§ 6.14]
- J. Placement at a Nonprofit Charity During the Healing Period [§ 6.15]

- III. Permanent Disability [§ 6.16]**
 - A. Generally [§ 6.17]
 - B. Mandatory Initiation of Permanent Partial Disability Payments; Accrual [§ 6.18]
 - C. Advancements and Lump-Sum Settlements [§ 6.19]
 - D. Permanent Partial Disability [§ 6.20]
 - 1. Schedule Injury [§ 6.21]
 - 2. Occupational Hearing Loss [§ 6.22]
 - 3. Nonschedule Injury [§ 6.23]
 - a. Generally [§ 6.24]
 - b. Proof Necessary [§ 6.25]
 - c. Notice Required [§ 6.26]
 - d. 85% Rule [§ 6.27]
 - e. Functional Impairment Rating [§ 6.28]
 - f. Five-Percent Variance (or More) from Expert Opinion [§ 6.29]
 - g. Actual Wage Loss Concept [§ 6.30]
 - h. Apportionment of Permanent Disability [§ 6.31]
 - i. Geographical Factor [§ 6.32]
 - E. Permanent Total Disability [§ 6.33]
 - 1. Generally [§ 6.34]
 - 2. Schedule Injury [§ 6.35]
 - 3. Nonschedule Injury [§ 6.36]
 - 4. *Wagner-Butler* Doctrine [§ 6.37]
 - 5. Computations [§ 6.38]
 - 6. Supplemental Benefits [§ 6.39]
 - F. Disfigurement [§ 6.40]
 - G. Second Injury Fund [§ 6.41]
 - H. Nondisabling Condition [§ 6.42]

- IV. Vocational Rehabilitation [§ 6.43]**
 - A. Generally [§ 6.44]
 - B. Retraining Benefits Through DVR [§ 6.45]
 - C. Retraining Benefits Through a Private Rehabilitation Counselor [§ 6.46]

V. Offsets and Overpayments [§ 6.47]

- A. Overpayment of Compensation [§ 6.48]
- B. Public Assistance [§ 6.49]
- C. Social Security Disability Income Offset [§ 6.50]

CHAPTER 7

DEATH BENEFITS

I. Who May Claim [§ 7.1]

- A. Generally [§ 7.2]
- B. Total Dependency [§ 7.3]
- C. Partial Dependency [§ 7.4]
- D. Parents [§ 7.5]

II. Computing Death Benefits [§ 7.6]

- A. Limitations [§ 7.7]
 - 1. Death as Result of Compensable Injury [§ 7.8]
 - 2. Death Not as Result of Compensable Injury [§ 7.9]
- B. Burial Expense [§ 7.10]
- C. Children's Fund [§ 7.11]

III. Other Considerations [§ 7.12]

- A. Employer's Liability to Work Injury Supplemental Benefit Fund [§ 7.13]
- B. Insurer's Potential Excess Liability [§ 7.14]
- C. Special Benefits for Safety Employees [§ 7.15]

CHAPTER 8

PENALTIES

I. 15% Increased Compensation [§ 8.1]

- A. Generally [§ 8.2]
- B. Safety Investigation [§ 8.3]
- C. Prima Facie Case [§ 8.4]
 - 1. Violation [§ 8.5]
 - 2. Notice [§ 8.6]
 - 3. Causation [§ 8.7]
 - 4. Burden of Proof [§ 8.8]

- D. Defenses [§ 8.9]
 - 1. Employee Misconduct [§ 8.10]
 - 2. Safety Rule Unlawful [§ 8.11]
 - 3. Guard Not Available [§ 8.12]
 - 4. Injury Not Compensable [§ 8.13]
 - 5. Statute of Limitation [§ 8.14]
- E. Hearing Procedure [§ 8.15]
- F. Compromise [§ 8.16]

- II. Decreased Compensation [§ 8.17]**
 - A. Generally [§ 8.18]
 - B. Burden of Proof [§ 8.19]
 - C. 100% Decreased Compensation [§ 8.20]

- III. Bad Faith and Delay in Payment [§ 8.21]**
 - A. Generally [§ 8.22]
 - B. Standard of Proof [§ 8.23]
 - C. Award of Penalty [§ 8.24]
 - D. Delay in Payment and Interest on Awards [§ 8.25]

- IV. Unreasonable Refusal to Rehire [§ 8.26]**
 - A. Generally [§ 8.27]
 - B. Jurisdiction [§ 8.28]
 - C. Prima Facie Claim [§ 8.29]
 - 1. Claimant Must Be Employee [§ 8.30]
 - 2. Injury Must Be Compensable [§ 8.31]
 - 3. Employer Must Have Refused to Rehire Employee [§ 8.32]
 - 4. Refusal to Rehire Must Have Been Without Reasonable Cause [§ 8.33]
 - 5. Suitable Employment Must Have Been Available [§ 8.34]
 - D. Penalty [§ 8.35]
 - E. No Duty to Mitigate Damages [§ 8.36]
 - F. Use of Medical Reports [§ 8.37]
 - G. Effect of Prior Administrative Determinations [§ 8.38]
 - 1. Worker’s Compensation Proceedings [§ 8.39]
 - 2. Admissibility of Unemployment Insurance Decision [§ 8.40]
 - H. Exclusive Remedy [§ 8.41]

- V. Illegal Employment of Minors [§ 8.42]**

PART III PRACTICE AND PROCEDURE

**CHAPTER 9
CLAIMS**

- I. Undisputed Claims [§ 9.1]**
 - A. Report of Injury [§ 9.2]
 - B. Review of Medical Reports [§ 9.3]
 - C. Report of Fraud [§ 9.4]

- II. Disputed Claims [§ 9.5]**
 - A. Prehearing Procedure [§ 9.6]
 - 1. Generally [§ 9.7]
 - 2. Application for Hearing [§ 9.8]
 - 3. Insurer’s Answer [§ 9.9]
 - 4. Dismissal of Application [§ 9.10]
 - 5. Prehearing Conference [§ 9.11]
 - B. Examination of Claimant [§ 9.12]
 - 1. Medical Examination [§ 9.13]
 - 2. Vocational Examination [§ 9.14]
 - 3. Requirement to Furnish Reports [§ 9.15]
 - 4. Tie-Breaker Examination [§ 9.16]
 - 5. Impleading Additional Parties [§ 9.17]
 - C. Formal Hearing Procedure [§ 9.18]
 - 1. Location and Notice [§ 9.19]
 - 2. Certification of Readiness (COR) [§ 9.20]
 - 3. Right to Further Hearing [§ 9.21]
 - 4. Depositions and Out-of-State Hearings [§ 9.22]
 - 5. Use of Subpoena [§ 9.23]
 - 6. Hearing Protocol [§ 9.24]
 - a. Generally [§ 9.25]
 - b. Burden of Proof [§ 9.26]
 - c. Use of Certified Medical or Vocational Reports and Hospital and Medical Records [§ 9.27]
 - d. Abrogation of Certain Privileges [§ 9.28]
 - e. Use of Statement [§ 9.29]
 - f. Use of Vocational Testimony [§ 9.30]
 - 7. Rules of Evidence [§ 9.31]
 - 8. Administrative Notice [§ 9.32]

- D. Posthearing Procedure [§ 9.33]
 - 1. Additional Medical Examination [§ 9.34]
 - 2. Orders [§ 9.35]
 - a. Generally [§ 9.36]
 - b. Interlocutory Orders [§ 9.37]
 - c. Orders Amending Error [§ 9.38]
 - 3. Tie-Breaker Decision [§ 9.39]
- E. Jurisdiction Following Final Order [§ 9.40]

III. Claims Against Third Parties [§ 9.41]

- A. Exclusive Remedy [§ 9.42]
 - 1. Generally [§ 9.43]
 - 2. Exceptions to Coemployee Immunity [§ 9.44]
 - 3. Exceptions to Employer Immunity [§ 9.45]
- B. Employee's Right to Bring Action [§ 9.46]
- C. Contractor Over [§ 9.47]
- D. Temporary Help Employer [§ 9.48]
- E. Medical Malpractice and Uninsured Motorist Recoveries Exempt [§ 9.49]
- F. Penalty Payments Not Recoverable [§ 9.50]
- G. Settlements [§ 9.51]
 - 1. Generally [§ 9.52]
 - 2. Attorney Fees [§ 9.53]
 - 3. Allocation of Settlement Proceeds [§ 9.54]
 - 4. Indemnification and Waiver [§ 9.55]

IV. Limitations [§ 9.56]

- A. Statute of Limitation [§ 9.57]
- B. Payment of Barred Disease Claims [§ 9.58]
- C. Payment of Barred Claims for Serious Trauma [§ 9.59]

CHAPTER 10 REVIEW AND APPEAL

I. Administrative Review [§ 10.1]

- A. Petition for Review [§ 10.2]
- B. Mistake or Newly Discovered Evidence [§ 10.3]

II. Judicial Appeal [§ 10.4]

- A. Commencing Action in Circuit Court [§ 10.5]
 - 1. Filing and Service [§ 10.6]

2. Naming Defendants [§ 10.7]
3. Venue [§ 10.8]
4. Answer [§ 10.9]
5. Appealable Orders [§ 10.10]
6. Compensation During Appeal [§ 10.11]
- B. Scope of Circuit Court Review [§ 10.12]
 1. Generally [§ 10.13]
 2. Sufficiency of the Evidence [§ 10.14]
 3. Conclusions of Law [§ 10.15]
- C. Collateral Attack [§ 10.16]
- D. Appeal to Court of Appeals [§ 10.17]
 1. Generally [§ 10.18]
 2. Filing and Service [§ 10.19]
 3. Venue [§ 10.20]
 4. Scope of Appellate Review [§ 10.21]
- E. Petition for Review to Wisconsin Supreme Court [§ 10.22]

CHAPTER 11

SETTLEMENTS

- I. Stipulation or Compromise? [§ 11.1]**
 - A. Generally [§ 11.2]
 - B. Stipulation [§ 11.3]
 - C. Compromise [§ 11.4]
 1. Generally [§ 11.5]
 2. Limited Compromise [§ 11.6]
 3. Review of Compromise [§ 11.7]
- II. Payment of Settlement [§ 11.8]**
 - A. Lump-Sum Settlement [§ 11.9]
 - B. Structured Settlement [§ 11.10]
 - C. Rights of Nonindustrial Insurers [§ 11.11]
- III. Medicare Considerations in Worker's Compensation Settlements [§ 11.12]**

APPENDICES

APPENDIX 1

WORKER'S COMPENSATION ACT

APPENDIX 2

WISCONSIN ADMINISTRATIVE RULES

- A Wisconsin Administrative Code Chapter DWD 80
- B Wisconsin Administrative Code Chapter LIRC 3
- C Wisconsin Administrative Code Chapter HA 4

APPENDIX 3

FORMS

- A Medical Treatment Statement—Supplies and Medications (WKC-3)
- B Hearing Application (WKC-7)
- C Sample Fee Agreement
- D Compromise Review Application (WKC-7-B)
- E Employer's First Report of Injury or Disease (WKC-12)
- F Supplementary Report on Accidents and Industrial Diseases (WKC-13)
- G Wage Information Supplement (WKC-13-A)
- H Medical Report on Industrial Injury (WKC-16)
- I Physician's Report on Eye Injuries (WKC-16-A)
- J Practitioner's Report on Accident or Industrial Disease in Lieu of Testimony (WKC-16-B)
- K Subpoena (WKC-17-DHA-E)
- L Admission to Service and Answer to Application (WKC-19-DHA)
- M Petition for Review of Findings and Order of Administrative Law Judge (WKC-28)
- M.2 Petition for Review of Findings and Order of Administrative Law Judge (WKC-28-DHA)
- N License Application (WKC-34)
- O Worker's Compensation PreHearing and Hearing Appearance Permit Application (WKC-35)
- P Death Benefit Stipulation (WKC-135)
- Q Advancement or Lump Sum Request (WKC-136-E)
- R Supplemental Payments Reimbursement Request (WKC-140)
- S Third Party Proceeds Distribution Agreement (WKC-170)
- T Compromise Agreement (WKC-176)

- U Stipulation (WKC-177)
- V Social Security Information Request (WKC-6156)
- W Vocational Expert Report (WKC-6743)
- X Worksheet for Temporary Partial Disability (WKC-7359)
- Y Corporate Officer Option (WKC-7602)
- Z Necessity of Treatment Dispute Resolution Request (WKC-9380)
- AA Voluntary and Informed Consent for Disclosure of Health Care Information (WKC-9488)
- BB Reasonableness of Fee Dispute Resolution Request (WKC-9498)
- CC Certificate of Readiness and Request to Schedule a Hearing (WKC-15717)
- DD Suggested Form of Complaint for Review of an Order or Award of the Labor and Industry Review Commission

APPENDIX 4

OTHER MATERIALS

- A History of Worker's Compensation Legislation and Regulations
- B Effective Dates for Amendments to Statute of Limitation: Wis. Stat. §§ 102.17(4) & 102.66
- C Mileage Rates
- D Maximum Wage and Rate Chart
- E Checklist
- F DILHR Memorandum on Social Security Reverse Offset
- G Worker's Compensation Division Memorandum on Unemployment Compensation Benefits and Temporary Total Disability Benefits
- H Memorandum Regarding Payments to Work Injury Supplemental Benefit Fund
- I Worker's Compensation Division Memorandum on Limitations on Public Access to Records
- J Summary of Reporting Requirements in Wis. Admin. Code § DWD 80.02
- K DVR Program Policy
- L Three-Day Waiting Period
- M Medicare Secondary Payer Resources
- N Wisconsin Worker's Compensation Pool Policy, Part Three: Other States' Insurance
- O Department Policies and Procedures
- P Worker's Compensation Division Memorandum on Attorney Fees

TABLE OF CASES

TABLE OF STATUTES, REGULATIONS, AND RULES

INDEX

