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WISCONSIN WORKERS' COMPENSATION LAW SUMMARY 2017

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Statute of Limitations		
Notice of / Obligation to Assert Injury Claim	§102.12	<ul style="list-style-type: none"> 2 years from injury date or date employee knew or ought to have known the nature of the disability and its relation to employment Limited application because claim will not be barred if employer "knew or should have known" within 2 year period about injury (not the disability) 30 days – Actual notice to employer required within 30 days after the injury or within 30 days after employee <i>knew or ought to have known</i> the nature of their disability and its relation to the employment. Exception: claim not barred if employer was not <i>mised</i> by notice failure.
Claim Completely Barred <u>TRAUMATIC INJURY ON/BEFORE 3/1/2016</u>	§102.17(4)	Must file Hearing Application within 12 years from the date of injury, the date of death, or the date of payment of last compensation, which includes sums paid for approved compromises but does <u>not</u> include medical treatment or burial expenses
Claim Completely Barred <u>TRAUMATIC INJURY ON/AFTER 3/2/2016*</u>	§102.17(4)	Must file Hearing Application within 6 years from the date of injury, the date of death, or the date of payment of last compensation, which includes sums paid for approved compromises but does <u>not</u> include medical treatment or burial expenses. *Does not change SOL for occupational diseases (still 12 years)
No Limitations	§102.17(4)	Serious traumatic injuries, including: <ol style="list-style-type: none"> Loss or total impairment of a hand, arm, leg, or foot Any loss of vision Any permanent brain injury Need for an artificial spinal disc Total or partial knee or hip replacement <i>Barred but meritorious occupational disease claims can be brought against Work Injury Supplemental Benefit Fund</i>
Insurance and Reporting Requirements		
Insurance Requirement	§102.28(2)(a)	An employer as defined by §102.04 must insure liability for workers' compensation.

		Employers can be self-insured only upon approval from the DWD.
Responding to Claims	DWD 80.02(1)	Employers must report a work incident resulting in death to DWD and insurer within one day.
	DWD 80.02(1)	Employers must report a work injury claim to insurer <u>within 7 days</u> of the incident.
	DWD 80.02(2)	For work injuries leading to disability beyond third day after employee leaves work, self-insured employers and insurers must file First Report of Injury / WKC-12-E <u>within 14 days</u> , and Supplementary Report / WKC-13-E must be filed before the 30 th day.
	§102.18(1)(bp)	If employer or insurer intentionally fails to file a report of injury, potential penalty for bad faith up to \$30,000 or 200% of compensation due for each occurrence.
	DWD 80.02(2)(e)	Self-insured employers and insurance carriers must file an updated WKC-13 with DWD and employee <u>within 30 days if</u> : <ol style="list-style-type: none"> 1. Compensation changes from temporary disability to permanent disability 2. Temporary disability is reinstated 3. Temporary partial disability is paid (include WKC-7359 TPD worksheet) 4. Final payment of compensation is made. If applicable, include a final medical report with the WKC-13, or explain why the report is not being submitted and provide an estimated submission date. <p>A final medical report is needed when: (a) there is more than three weeks of temporary disability (except in case of hernia), (b) there is PPD, (c) the injured employee has undergone surgery to treat claimed condition (except in case of hernia)</p> <p>**Treating MDs final medical report must be provided on a timely basis</p> <p>**Maximum charge \$100.00 for treating MDs final medical report</p>
	DWD 80.02(2)(g)	Self-insured employers and insurance carriers must file written notice with the DWD and the employee <u>within 7 days if</u> : <ol style="list-style-type: none"> 1. Payments are stopped for any reason. If reason is other than employee's return to work, provide explanation for reason of stopped payments and what employee can do to reinstate payments. 2. Liability denied after concession of liability is made. Must provide a reason for the denial and advise of employee right to a hearing before the DWD 3. Amputation
	DWD 80.02(2m)(a)	Written notice is required to DWD and employee <u>within 14 days if</u> : <ol style="list-style-type: none"> 1. Liability denied, giving a reason for the denial and advising the employee of the right to a hearing before the department 2. Explanation that claim is not being paid because of further investigation, to specify if additional medical or other information is needed and to advise the employee of the right to a hearing before the department <u>if the claim is subsequently denied.</u>
	DWD 80.02(2)(i)	If increased compensation is due employee, must provide written notice to DWD and employee <u>within 30 days</u> after payment of increased compensation as proof of payment
	DWD 80.02(2)(j)	Written notice is required to DWD and employee <u>within 30 days</u> of employee failure to attend final medical examination. Must advise employee that examination must be attended in order to determine whether any permanent disability exists.
Denial		<ul style="list-style-type: none"> • Do not need to notify the Department when denying a medical only claim; however, you do need to notify the employee of the denial in writing within 14 days of the date of alleged injury. (Wis. Admin. Code DWD § 80.02(2m)). <ul style="list-style-type: none"> ○ If notice of the injury is not provided within 7 days of alleged injury, employer/carrier has 14 days from the date of notice to provide a decision.

Notice to Employee (Contents)	DWD 80.02(2m)	Per Wis. Admin. Code DWD § 80.02(2m), indicate one of the following: 1. A decision to deny liability for payment of compensation giving the specific reason for the denial, advising employee of right to a Hearing before the Department; or 2. An explanation that the claim is not paid because [insurance company or self-insured employer] is still investigating the claim. Notice shall specify if additional medical or other information is needed to complete the investigation. Notice shall advise employee of the right to a Hearing before the Department, if claim subsequently denied.
DWD Notice Requirement	§102.17(1)(a)	The Department is required to provide 10 days notice to the parties before a hearing.
Elements of Work Related Injury		
Employee Status	§102.07(4)	Every person in the service of another under any contract of hire, express or implied, is an employee.
Employer Status	§102.04(1)(b)1	An employer is anyone who employs three or more employees for services performed in Wisconsin, or employs at least one employee who is paid \$500 in a calendar quarter for services performed in Wisconsin.
Accident	(Defined by case law)	A fortuitous event, unexpected and unforeseen by the injured person. An accident occurs if either the cause was of an accidental character or if the effect was the unexpected result of routine performance of claimant's duties.
Injury (defined) In the Course of Employment Arising out of Employment	§102.01(2)(c) §102.03(1)(c) §102.03(1)e	<ul style="list-style-type: none"> • "Injury" means mental or physical harm to an employee caused by accident or disease. • Injury must occur while the employee is performing service growing out of and incidental to their employment. • Related to origin or cause of the accident, thus, the risk of a particular accident might have been contemplated by reasonable person when entering particular employment.
Occupational Disease	(Defined by case law)	<p>"[A]n occupational disease as that term is used in the Act is a disease like silicosis, which is acquired as a result and an incident of working in an industry over an extended period of time." <i>Rathjen v. Industrial Comm'n</i>, 233 Wis. 452, 460-61 (1940).</p> <p>It cannot result from a single incident. <i>Kwaterski v. LIRC</i>, 158 Wis.2d 112, 119 (Ct. App. 1990). However, LIRC has indicated an occupational exposure can result from activity of a single day. <i>Gumienny v. County Concrete Corp.</i>, WC Claim No. 2004-017501 (LIRC July 11, 2006).</p> <p>The material contributory causative factor standard of proof is very low— with courts finding even a 5% contribution toward the injury satisfies occupational causation standard.</p>
Types of Injury		
Occupational Hearing Loss	§102.555	Results from ongoing noise exposure over extended period of time. Measured based on percentage of 216 weeks of permanency for bilateral loss / 36 weeks for loss in one ear. (Compare: Traumatic hearing loss: 330 weeks for bilateral loss / 50 weeks for loss in one ear.)
Mental Injury	§102.01(2)(c)	WI recognizes physical/mental trauma/stimulus leading to (unscheduled) mental injury <ul style="list-style-type: none"> • <u>Physical-Mental</u>: Post-traumatic mental injury (e.g. PTSD, depression, phobia). • <u>Mental-Mental</u>: Non-traumatic caused mental injury (i.e. mental harm w/o physical trauma if it arises from "extraordinary stress"). • <u>Mental-Physical</u>: Stress aggravating physical condition (i.e. employee must show that work stress precipitates, aggravates or accelerates a progressively deteriorating or degenerative condition beyond its normal progression).
Disfigurement	§102.56	Max recovery up to one year employee's average annual earnings (<u>50 times AWW</u> unless earnings in prior 52 weeks higher), capped at State's max wage rate at time of injury.

	§102.56	Youthful workers under age 27 at time of injury are presumed to be earning max wages for purposes of disfigurement. Defined by Wisconsin Supreme Court as: “an impairment that significantly affects the appearance of a person.” <i>County of Dane v. LIRC</i> , 315 Wis.2d 293 (2009). Limited to those areas of the body exposed in the “normal course of employment.” (e. g. face, neck, hands, arms and legs). Precedent has differed on compensability of limp. Currently, many are compensable. <i>Id.</i>
Average Weekly Wage (AWW)		
Average Weekly Wage	§102.11(1) §102.11(1)(g)	Generally, AWW calculated on assumption of full-time work. AWW is the <u>higher of</u> : (1) Hourly wage multiplied by the hours regularly scheduled to work at the time of injury; (2) Actual gross earnings during the 52 weeks before the injury divided by the number of weeks worked during that period. If employee under 27 years old, they are presumed maximum AWW for PPD calculation.
TEMPORARY TOTAL DISABILITY (TTD)		
TTD (defined)	§102.43	Benefit available when employee has a complete wage loss during the “healing period”. Rate equals 2/3 of the applicable AWW, not to exceed 2/3 of the maximum wage rate in effect on date of injury
TTD – 3 Day Waiting Period	§102.43	If employee does not remain disabled beyond 7 th calendar day after leaving work as a result of injury, they are not paid for first 3 days of missed work, but can be paid for days 4-6. If employee remains disabled beyond 7 th day, can recover initial 3 days.
Time Lost for Medical Appointments	DWD Policy, 7/19/2013	TTD/TPD is due where employee misses work to attend a related medical appointment “unless the treatment can reasonably be taken outside of working hours”
TTD Terminates Upon	§102.43(9) §108.04(5g)(a)	Traditional Grounds for Suspension of Benefits <ul style="list-style-type: none"> • Healing Plateau (MMI) • Unreasonable refusal to accept accommodating work • Conviction of crime substantially related to work • Conviction of crime, incarceration and unavailable to return to work • Unreasonable refusal to undergo recommended treatment (surgery / anesthesia not incl.) • For period of refusal to attend IME after ordered by DWD to comply with request • Violation of known and enforced drug policy after employee RTW light duty Newly Enacted (Effective 3/2/2016) Defenses Benefits may be suspended when an employee released to light duty is suspended or terminated due to “ <u>misconduct</u> ” or “ <u>substantial fault</u> ” as defined within Wisconsin unemployment statutes/rules in Wis. Stat. §108.04(5g)(a).
Application of New Defenses: Positive Drug Screen & TTD Liability During Light Duty		Benefits may be suspended if all of the following are true: <ol style="list-style-type: none"> 1. The employer has a <u>written</u> drug/alcohol policy. 2. That policy is <u>reasonable</u>. 3. The employee had <u>knowledge</u> of that policy. 4. The employee <i>either</i>: <ol style="list-style-type: none"> (a) <i>Admitted</i> to the use of alcohol beverages or a controlled substance or controlled substance analog; (b) <i>Refused</i> to take a test; or (c) <i>Tested positive</i> for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department. 5. The employee is <u>fired or suspended</u> as a result of the violation of the reasonable written policy.

TEMPORARY PARTIAL DISABILITY (TPD)		
TPD (defined)	§102.43(2)	If employee has not reached a healing plateau (MMI), and experiences a partial wage loss, eligible for TPD benefits.

PERMANENT PARTIAL DISABILITY (PPD)		
PPD (defined)	§ 102.52 § 102.44(3) DWD 80.02 § 102.52 DWD 80.32	<p>May be assigned to employee by M.D. after healing plateau (MMI). PPD rating based on employee's functional loss. PPD may be for scheduled (extremities, vision, hearing) or unscheduled injuries (head, back, neck, mental). Unscheduled injuries payable based on percentage of 1000 weeks.</p> <p>If employee has more than 3 weeks of temporary disability, employer/carrier must obtain report from M.D. indicating any resulting PPD, and if so, the extent of that disability.</p> <p>PPD is payable at a weekly rate equal to 2/3 of the employee's AWW, subject to State max rate in effect at time of injury.</p> <p>Provides listing of PPD for scheduled injuries</p> <p>Provides PPD minimums for particular injuries and/or surgical procedures</p>
PPD (apportionment)	§ 102.175(3)	<p>Newly Enacted (Effective 3/2/2016)</p> <p>Treater's and IME providers that provide permanency ratings are now tasked with providing an opinion as to what portion of the permanency rating was caused by the work-injury. Employers are now only responsible for the percentage attributed to the work-injury. However, if the causation for any prior disability rating is occupational exposure for the time of injury employer then the employer is responsible for that permanency as well.</p> <p>In addition, the statute provides that upon request the applicant shall disclose at the request of the employer/insurer "all previous findings of permanent disability or other impairments that are relevant to that injury."</p>
PERMANENT TOTAL DISABILITY (PTD)		
PTD (defined)	§ 102.44(2)	<p>Employee may be deemed permanently and totally disabled when determined:</p> <ol style="list-style-type: none"> 1. Complete physical incapacity (by statute or medical report); or 2. Vocational PTD (by vocational report supported by medical opinion) <p>If injured employee found to be PTD, receives weekly indemnity benefits at TTD rate, along with reasonable and necessary medical expenses for life.</p> <p>If employee deemed "Odd Lot" PTD, receives same benefits for life. Found when: "[a]n employee is so injured that he can perform no services other than those which are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist..." <i>Balczewski v. DIHLR</i>, 76 Wis.2d 487, 493 (1977).</p>
"Odd Lot" Doctrine (defined)		
Other Potential Benefits		
Vocational Retraining	DWD 80.49 § 102.61	<p>Eligibility requires a PPD rating and permanent work restrictions, precluding RTW with time of injury employer.</p> <p>DVR vocational retraining seeks to restore injured worker as nearly as possible to pre-injury earning capacity (to within 90% pre-injury earnings via accommodating work).</p> <p>Eligibility for retraining program from DVR based on (1) DVR rules; and (2) statutory provisions of "suitable employment" with the time-of-injury employer under § 102.61.</p> <p>If DVR finds employee eligible for services, could be exposure for: At least the first 80 weeks of TTD, meals, lodging and mileage during retraining period. DVR may cover books, tuition.</p> <p>NOTE: After employee receives eligibility determination from DVR, employee must provide written copy of permanent work restrictions to time of injury employer. Employer must indicate within 60 days whether suitable employment available, or submit conflicting medical report with different restrictions.</p>
Services from Division of Vocational Rehabilitation (DVR)	§ 102.61(1g)	
DVR Defenses		

<p>Private Counselor Services</p> <p>Defenses</p>	<p>§102.61(1m)(c)</p>	<p>DVR Defenses:</p> <ul style="list-style-type: none"> • Employee delay in seeking DVR retraining benefits beyond 60 days of healing plateau • <i>Massachusetts Bonding</i>, 275 Wis. 505 (1957): opinion of employer’s vocational expert largely irrelevant on appropriateness of the academic retraining program; unless: <ul style="list-style-type: none"> • Fraud: highly material facts misrepresented; or • Abuse of Discretion: abuse of administrative power • DVR retraining designed to enhance, rather than restore pre-injury earnings • DVR retraining remedial (G.E.D.) and not formal, regular attendance • Employee failure to follow DVR program • Refusal of legitimate offer of suitable employment • Employee quitting after RTW to time of injury employer <p>If injured employee waitlisted by DVR, they can choose a counselor from list maintained by Department. Private counselor determines whether employee can return to suitable employment (accommodating work within 85% pre-injury earnings, per DWD 80.49(4)(d) and (5)) without retraining, or if retraining is necessary, to develop program to restore employee as closely as possible to their pre-injury earning capacity.</p> <p>If private counselor provides employee services, could be exposure for: Private counselor fees, TTD, meals and mileage during retraining period, books, tuition.</p> <p>80 weeks or less of retraining recommended by private counselor presumed reasonable</p> <p>Private Counselor Defenses:</p> <ul style="list-style-type: none"> • (Same as DVR Defenses, except <i>Massachusetts Bonding</i> does not apply); • Employer’s vocational expert disagrees with program • No retraining program can restore as nearly as possible employee’s earning capacity • Employee’s job search was not reasonably diligent • Employee or counselor withheld highly material facts • Program inconsistent with physical capacity
<p>Loss of Earning Capacity (LOEC)</p> <p>Defenses</p>	<p>§102.44(3) DWD 80.34</p> <p>§102.44(6)</p> <p>§102.44(6)(g)</p>	<p>When compensable injury leads to a nonscheduled PPD rating and permanent restrictions, an LOEC claim is available if employee cannot RTW for their employer at 85% of AWW.</p> <p>Claims asserted/defended against via vocational expert reports. LOEC calculated as a percentage toward 1000 wks of permanency, and paid at PPD rate</p> <p>An employee who returns to work for the at injury employer, or employee offered a job that was refused without good cause at 85% of pre-injury wage cannot bring LOEC claim.</p> <p>CAVEAT: if employment relationship is terminated by employer or by employee because their physical or mental limitations prevent them from continuing the employment, or if wage loss exceeds 15%, the DWD can re-open LOEC claim within 12 yrs from date of injury or last payment of compensation.</p> <p>LOEC claims are barred if employer makes a good faith job offer that is refused by employee without reasonable cause.</p>
<p>Medical Treatment</p>	<p>§102.42</p>	<p>Mileage to/from related treatment is compensable, payable for \$0.51/mile.</p>

	DWD 80.72 DWD 80.73	Health service fee dispute resolution process Health service necessity of treatment dispute resolution process Process initiated by insurer or self-insured employer
Death Benefits	§102.46 §102.47 §102.50 §102.49(5)	Where employee death is proximately related to work injury, dependent benefits are 4x the employee's annual earnings, subject to max wage caps. (See Decreased Compensation §.) If PTD employee dies from any cause, similar dependent death benefits due, limited by number of weeks of benefits PTD employee received before death. If injured employee with imposed PPD rating dies, (death not related to the injury) any unaccrued PPD benefits are paid to dependents. If injured employee (with/without dependents) dies as result of work injury, burial expenses payable (capped at \$10,000.00). If injured employee dies as a result of work injury, payment of \$20,000.00 required to Work Injury Supplemental Benefit (WISB) Fund.
Second Injury Fund (Work Injury Supp. Benefit Fund)	§102.59 §102.65	Fund supplements as opposed to reduce carrier liability. Fund access requires current injury involving 200 weeks of PPD and a similarly disabling (equivalent to 200 weeks PPD) pre-existing condition, whether work related or not. If requirements met, Fund will pay an additional benefit up to the lesser of the two disabilities. Fund only pays after benefits paid for current injury. Fund does not apply to injuries involving Permanent Total Disability.
Offsets • SSDI Benefits	§102.44(5)(a)	A WC recipient collecting Social Security Disability cannot net, in combined benefits, more than 80% of their average current earnings as determined by SSA. In that event, carrier entitled to offset. Offset can be applied toward TTD, PPD and PTD benefits. (However, there is no offset for maintenance TTD benefits received during DVR retraining.)

Penalties		
15% increased compensation	§102.57	<p>Employer failure to comply with safety statute or DWD rule, with violation a substantial factor in causing compensable injury;</p> <p>An employer's violation of a federal OSHA standard may be evidence for a violation of Wisconsin's safe place statute, s. 101.11 for the purposes of assessing the increased compensation. <u>Sohn Manufacturing Inc. v. LIRC</u>, 2013 WI App 112, 350 Wis. 2d 469, 838 N.W.2d 131, 12-2566.</p> <p>\$15,000.00 cap on penalty</p> <p>Defenses: Employee misconduct; Safety rule unlawful; Guard not available; Non-compensable injury; Statute of limitations</p>
15% decreased compensation	§102.58	<p>Employee safety rule violation Employee failure to use safety device Intoxication (Employer must prove intoxication caused accident)</p> <p>\$15,000.00 max reduction</p>
Indemnity Barred / Intoxication		<p>Injuries on/after 3/2/16: Employee cannot recover indemnity (TTD/PPD) or death benefits where the employer proves a violation of a drug or alcohol policy directly caused injury.</p>
Bad Faith	§102.18(1)(bp)	<p>Exclusive remedy imposed for:</p> <p>Employer failure to report injury; or Failure to make indemnity/medical payments due to malice or bad faith; Penalty capped at lesser of 200% compensation due, or \$30,000.00 for each event/occurrence.</p> <p>Test: Whether failure to report is "unreasonable" Whether failure to pay indemnity/medical supported by "credible evidence" that demonstrates claim is "fairly debatable".</p>
Delay in Payment	§102.22(1)	<p>If employer or carrier's inexcusable delay results in late payment of compensation, delayed benefits are increased by 10%. Collection and interest on unpaid medical bills may be assessed.</p>
Unreasonable Refusal to Rehire	§102.35(3)	<p>If employer refuses to rehire an employee without reasonable cause, where suitable employment is available within the employee's physical and mental limitations, after employee has sustained a compensable injury, employee can be awarded up to one year of lost wages.</p> <p>Federal law may preempt claim determination if claim requires interpretation of Collective Bargaining Agreement. <i>Lingle v. Norge Division of Magic Chef, Inc.</i>, 486 U.S. 399 (1988).</p>
Practice and Procedure		
Litigation Started by Hearing Application	§102.17	<p>Employee or employee's attorney can file a Hearing Application if compensation is denied. The HA sets forth a description of the injury, the disability claimed, name of treating MD's.</p> <p>The Application is filed with the Department along with copies to serve to the adverse parties. The Department will serve the employer and insurance carrier.</p>
File Answer	DWD 80.05(2)	<p>The employer or insurance carrier has 20 days after receiving the Hearing Application to file Answer with the Department.</p>
Obtaining Medical Records	§102.13(2)	<p>An Employee that reports an injury alleged to be work related or files a Hearing Application <u>waives any physician / patient privilege</u></p> <ul style="list-style-type: none"> • Voluntary consent form req'd to obtain all records as opposed those "reasonably related" • Cost – not to exceed greater of 45¢/page or \$7.50 per request, plus postage; <p><i>Electronic</i> medical records – fee fixed at \$26.00</p>

IME	§102.13(1)(a)	<ul style="list-style-type: none"> Employee required to attend upon written notice and advance payment of mileage/expenses Employer required to provide copy of IME to employee immediately upon receipt Employer not required to provide copy of Medical Records Review report to employee, unless it is used to deny claim
Written Statements	§102.123	Must be provided to employee at time statement is given.
Recorded Statements	§102.123	Must be provided upon request of employee or attorney “within a reasonable time.”
Surveillance Video		Is admissible with authentication. <ul style="list-style-type: none"> Need to provide copy of video to employee if provided to IME doctor.
Vocational Exam / Experts	§102.13(1)(am) §102.17(7)(b)	<ul style="list-style-type: none"> Can require employee to attend vocational exam if LOEC is claimed; Employee to disclose vocational expert at least 60 days before Hearing if LOEC claimed; Employer / Carrier to disclose vocational expert at least 45 days before Hearing;
Liability Apportionment	§102.175	Allowed when it is established at Hearing that two or more accidental injuries, for each of which a party to the proceedings is liable, have each contributed to a physical or mental condition for which benefits would be otherwise due.
Settlements are by Compromise Agreement		
Stipulation	§DWD 80.10	Where a dispute once existed but the carrier is now conceding certain benefits.
Limited Compromise	§102.16(1)	Parties are willing or able to resolve by Compromise Agreement some, but not all, of the issues pending between them.
Full and Final Compromise	§102.16(1)	Requires reasonable dispute (and typically the equivalent of 100 weeks of PPD at issue)
Results of Hearing		
ALJ will issue Decision	§102.18(1)(b)	The ALJ issues a written decision within 90 days of the hearing.
Final Order	§102.18	Disposes of all claims arising from an injury date. There are exceptions: <ul style="list-style-type: none"> The Commission has one year to set aside an order. (§102.18(4)(c)) Final order does not preclude a claim for future medical, subject to statute of limitations. If penalty statutes are not specifically mentioned in the order, potential claim(s) remains open. (§102.18(4)(a)) Employee can reopen a case within 3 years from the date of an order if an occupational disease is mistaken for an accidental injury (§102.18(5)) Subject to Statute of Limitations, any order regarding occupational disease may be reopened from time to time. (§102.18(6)) LOEC claim barred by 85% earnings rule may be reopened (See LOEC above). (§102.44(6))
Interlocutory Order	§102.18(1)(b)	Provides reasonable, necessary medical treatment related to work injury for life of claimant
Review and Appeal		
Review to Labor and Industry Review Commission (LIRC)	§102.18(3)	<p>Any party in interest may petition LIRC for review of a decision awarding/denying compensation within 21 days of the Order of the Administrative Law Judge (ALJ).</p> <p>LIRC reviews ALJ decisions <i>de novo</i>, based on its own review of the record.</p> <p>LIRC determines whether the employee/applicant sustained their burden of proving the claim beyond a “legitimate doubt”</p>
Judicial Review to Circuit Court	§102.23	<ul style="list-style-type: none"> Circuit Court review requires commencement of an action in the circuit court of the county where the aggrieved party resides within 30 days of date of LIRC order. Strict compliance is required. Adverse parties required to file an Answer within 20 days after service. (If adverse party is an insurance company, they have 45 days to file an Answer.)

		<ul style="list-style-type: none"> • Circuit Court can only confirm or set aside an award or decision. • Circuit Court is not a fact finder on review.
Appeal to Court of Appeals	§102.25	<ul style="list-style-type: none"> • Appeal must be taken within 45 or 90 days of circuit court decision, depending on when notice of entry of judgment served. • Initiated by filing a notice of appeal with clerk of the circuit court that issued original judgment or order; • Appeal will be heard in appellate district that includes the circuit court that issued judgment or order; • Court of Appeals provides no special deference to circuit court decision.
Petition for Review to Wisconsin Supreme Court	§808.10 §809.62(1r)	<ul style="list-style-type: none"> • Review not guaranteed; requires grant of a petition for review; • Petition for review must be filed within 30 days of date of the court of appeals decision; • Review granted only when special and important reasons are presented.

RESOURCES

<http://dwd.wisconsin.gov/wc/workers/default.htm> – Wisconsin’s Workers’ Compensation Division
http://lirc.wisconsin.gov/workers_compensation.htm – Labor & Industry Review Commission (LIRC)
<http://www.legis.state.wi.us/rsb/stats.html> – Wisconsin Statutes
http://docs.legis.wisconsin.gov/code/admin_code/dwd/080_081 – Wisconsin Administrative Code

www.HennessyRoach.com

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