



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-094

AN ORDER to repeal DWD 80.24; to amend DWD 80.05 (1) and 80.15; and to repeal and recreate DWD 80.21 (4), relating to workers compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

06-28-2002 RECEIVED BY LEGISLATIVE COUNCIL.

07-23-2002 REPORT SENT TO AGENCY.

RNS:NZ

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-094

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

In s. DWD 80.21 (4), “may” should replace “shall” and “the” should replace “such.” [See s. 1.01 (2) and (9) (c), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DWD 80.15, since the time requirements are now the same and the rule merely mirrors the statute, could the section be expressed in one sentence?

b. In s. DWD 80.21 (4), it would be clearer if “. . . witnesses involved under . . .” were changed to “. . . witnesses involved as required under . . .”

State of Wisconsin
Department of Workforce Development

Chapter DWD 80

Worker's Compensation Procedures on Claim, Payment After an Order, Reports By Expert Witnesses, and Statement of Employee

The Wisconsin Department of Workforce Development proposes an order to amend DWD 80.05(1) and DWD 80.15; repeal and recreate DWD 80.21(4); and repeal DWD 80.24; relating to worker's compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee.

Analysis Prepared by the Department of Workforce Development

Statutory authority: s. 102.15(1), Stats.

Statutes interpreted: ch. 102, ss. 40.65, 102.123, 102.17(1)(b), 102.18(1)(e), 106.25, 303.07(7) and 303.21, Stats.

DWD 80.05 provides that for disputes coming under the jurisdiction of the department, either party may apply for relief and the department shall make the order or award that is lawful and just under the circumstances. In addition to worker's compensation claims under ch. 102, Stats., and duty disability under s. 40.65, Stats., the department has jurisdiction over death and disability benefits resulting from public insurrection under s. 106.25, Stats., county reforestation camps under s. 303.07(7), Stats., and compensation to injured prisoners under s. 303.21, Stats.

The statutory section pertaining to death and disability benefits resulting from public insurrections was changed from s. 101.47, Stats., to s. 106.25, Stats., the section pertaining to county reforestation camps was changed from s. 56.07, Stats., to s. 303.07(7), Stats., and the section for compensation to injured prisoners was changed from s. 56.21, Stats., to s. 303.21, Stats.

The proposed amendment is a technical correction and does not involve policy or procedural change.

The proposed amendment deletes the references to obsolete statutory sections and updates the rule to reflect the current statutory sections for death and disability benefits resulting from public insurrections, county reforestation camps, and compensation to prisoners.

DWD 80.15 was created to set time limits for insurance carriers and self-insured employers to pay orders awarding benefits and payments required under chapter 102, Stats. The rule provides for payment of orders awarding compensation to be made within 21 days after the department mails a copy of the administrative law judges finding and order to that party's last known address and for amounts ordered by stipulation or compromise settlement payments within 10 days after the department mails a copy of the

order to that party's last known address. Section 102.18(1)(e), Stats., Chapter 37, Laws of 2001, effective January 1, 2002, provides for a uniform 21 day payment standard for all orders including payments ordered by stipulation or compromise. The proposed amendment will require payment of all orders to be made within 21 days.

The language of the proposed amendment rule will conform the rule to the current statutory language in s. 102.18(1)(e), Stats.

DWD 80.21(4) prohibits testimony from expert witnesses concerning wage earning impairment (loss of earning capacity) to be received into evidence at a hearing unless the party offering the testimony notified the department and the other parties to the case of the intent to produce this testimony and the names of the witnesses involved. The rule requires that the notice must be given at least 30 days before a scheduled hearing.

Testimony or certified medical reports from expert witnesses offered by the party that raised the loss of earning capacity issue must be excluded from evidence under s. 102.17(1)(b), Stats., if that party failed to notify the department and the other parties of interest at least 60 days before the hearing date of that party's intent to provide the testimony or reports and the names of the expert witnesses involved. Section 102.17(7)(b), Stats., also provides for the exclusion from evidence testimony or reports from expert witnesses offered by a party in response to the loss of earning capacity issue, if the responding party failed to notify the department and other parties of the intent to provide the testimony or reports and the names of the expert witnesses at least 45 days before the hearing date. The department is given the authority in s. 102.17(7)(c), Stats., to waive the 60 and 45 days notice requirements for good cause where no party is prejudiced by the delay.

The notice specified in the rule is significantly different from the notice requirements set forth in s. 102.17(7)(b), Stats. The language of the proposed amendment will conform the rule to the current statutory notice requirements in s. 102.17(7)(b), Stats.

DWD 80.24 requires that a copy of a statement must be provided to the employee when the employee gives a signed statement which in any way concerns his or her worker's compensation claim. The rule also requires that when a statement is taken by a recording device, a copy of the entire statement must be given to the employee or his or her attorney within a reasonable time after an application for hearing is filed with the actual recording available as an exhibit if a formal hearing is held. Use of the statement in any manner in connection with the employee's claim is precluded if the employer or insurance carrier fails to comply with the rule.

Section 102.123, Stats., Chapter 37, Laws of 2001, effective January 1, 2002, codified the conditions for use of statements by employees in worker's compensation cases. Section 102.123, Stats., requires that when an employee provides an employer or insurance carrier a signed statement relating to the claim, the employer or insurance carrier must give a copy of the statement to the employee within a reasonable time. The rule does not specify a time by which the employer or insurer must give a copy of the signed statement to the employee. Section 102.123, Stats., also requires that when the statement is recorded, the employer or insurer must reduce the statement to writing after a request by the employee or his or her agent or attorney and provide a written copy of the entire statement within a reasonable time after the statement is taken. The rule specifies

that the employer or insurer is required to give the employee or his or her agent or attorney a written copy of a recorded statement within a reasonable time after an application for hearing is filed. Section 102.123, Stats., does not require the filing of an application for hearing before providing a written copy of a recorded statement.

The requirements for use of statements by employees concerning claims have been codified in s. 102.123, Stats. Repeal of the rule is necessary since use of statements by employees was codified by creation of s. 102.123, Stats., and the public policy consideration of the need to avoid confusion generated by different requirements contained in the rule and s. 102.123, Stats.

SECTION 1. DWD 80.05 is amended to read:

DWD 80.05 Procedure on claim. (1) In cases of disputes in matters coming under the jurisdiction of ch. 102, s. ~~101.47~~, 106.25, ~~56.21~~ 303.07(7), 303.21, or 40.65, Stats., any party to the dispute may apply to the department for relief and the department shall make such order or award as shall be lawful and just under the circumstances.

One sentence

SECTION 2. DWD 80.15 is amended to read:

DWD 80.15 Payments after an order. ~~Except for a stipulation or compromise, unless~~ Unless a party has filed a petition for review under s. 102.18 (3), Stats., that party shall pay an administrative law judge's order awarding compensation within 21 days after the department mails a copy of the administrative law judge's finding and order to that party's last known address. For payments ordered by stipulation or compromise, a party shall pay within ~~10~~ 21 days after the department mails a copy of the order to that party's last known address.

SECTION 3. DWD 80.21 (4) is repealed and recreated to read:

DWD 80.21 (4) No testimony or reports from expert witnesses on the issue of loss of earning capacity shall be received unless the party offering such evidence has notified the department and the other parties of interest of the party's intent to provide the testimony

or reports and the names of expert witnesses involved ^{As Required} under the provisions of s.

102.17(7), Stats.

SECTION 4. DWD 80.24 is repealed.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 80
Amendment No. if Applicable

Subject

Worker's compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule changes are technical corrections and have no fiscal effect.

Long-Range Fiscal Implications
None

Agency/Prepared by: (Name & Phone No.)
DWD/Elaine Pridden 267-9403

Authorized Signature/Telephone No.

Elaine Pridden 267-9403

Date

6/28/02

FISCAL ESTIMATE WORKSHEET

2001 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 80

Amendment No.

Subject

Worker's compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee.

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
0

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$0	\$0 -
(FTE Position Changes)	0 (FTE)	(- FTE)
State Operations - Other Costs	0	0
Local Assistance	0	-
Aids to Individuals or Organizations	0	0
TOTAL State Costs by Category	\$0	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	\$0-
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$0	\$0-

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$0	\$0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)
DWD/ Elaine Pridgen 267-9403

Authorized Signature/Telephone No.

Date

Edward Bernstein 267-9403 6/28/02

Scott McCallum
Governor

Jennifer Alexander
Secretary



OFFICE OF THE SECRETARY

201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
Fax: (608) 266-1784
<http://www.dwd.state.wi.us/>

**State of Wisconsin
Department of Workforce Development**

August 23, 2002

President of the Senate
220 South, State Capitol
Madison, Wisconsin 53702

Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 02-094


Rule number: DWD 80

Relating to: Workers compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


Jennifer Alexander
Secretary

Scott McCallum
Governor

Jennifer Alexander
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
Fax: (608) 266-1784
<http://www.dwd.state.wi.us/>

Rule Analysis for Legislative Review

Proposed rules relating to workers compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee

**DWD 80
CR 02-94**

Need for rules

The proposed rules make technical corrections to comply with statutory updates. There are no policy changes proposed.

Public hearing response

A public hearing was held in Madison on August 2, 2002. There were no appearances.

Response to Legislative Council staff recommendations

All comments were accepted.

Final regulatory flexibility analysis

A final regulatory flexibility analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses.

Department contacts

James T. O'Malley
Bureau of Legal Services
Workers Compensation Division
267-6704

Elaine S. Pridgen
Administrative Rules Coordinator
Office of Legal Counsel
267-9403

State of Wisconsin
Department of Workforce Development

Chapter DWD 80

Worker's Compensation Procedures on Claim, Payment After an Order, Reports By Expert Witnesses, and Statement of Employee

The Wisconsin Department of Workforce Development proposes an order to amend DWD 80.05(1) and DWD 80.15; repeal and recreate DWD 80.21(4); and repeal DWD 80.24; relating to worker's compensation procedures on claim, payment after an order, reports by expert witnesses, and statement of employee.

Analysis Prepared by the Department of Workforce Development

Statutory authority: s. 102.15(1), Stats.

Statutes interpreted: ch. 102, ss. 40.65, 102.123, 102.17(1)(b), 102.18(1)(e), 106.25, 303.07(7) and 303.21, Stats.

DWD 80.05 provides that for disputes coming under the jurisdiction of the department, either party may apply for relief and the department shall make the order or award that is lawful and just under the circumstances. In addition to worker's compensation claims under ch. 102, Stats., and duty disability under s. 40.65, Stats., the department has jurisdiction over death and disability benefits resulting from public insurrection under s. 106.25, Stats., county reforestation camps under s. 303.07(7), Stats., and compensation to injured prisoners under s. 303.21, Stats.

The statutory section pertaining to death and disability benefits resulting from public insurrections was changed from s. 101.47, Stats., to s. 106.25, Stats., the section pertaining to county reforestation camps was changed from s. 56.07, Stats., to s. 303.07(7), Stats., and the section for compensation to injured prisoners was changed from s. 56.21, Stats., to s. 303.21, Stats.

The proposed amendment is a technical correction and does not involve policy or procedural change.

The proposed amendment deletes the references to obsolete statutory sections and updates the rule to reflect the current statutory sections for death and disability benefits resulting from public insurrections, county reforestation camps, and compensation to prisoners.

DWD 80.15 was created to set time limits for insurance carriers and self-insured employers to pay orders awarding benefits and payments required under chapter 102, Stats. The rule provides for payment of orders awarding compensation to be made within 21 days after the department mails a copy of the administrative law judges finding and order to that party's last known address and for amounts ordered by stipulation or compromise settlement payments within 10 days after the department mails a copy of the

order to that party's last known address. Section 102.18(1)(e), Stats., Chapter 37, Laws of 2001, effective January 1, 2002, provides for a uniform 21 day payment standard for all orders including payments ordered by stipulation or compromise. The proposed amendment will require payment of all orders to be made within 21 days, except as provided in s. 102.21, Stats., for payment of awards by municipalities.

The language of the proposed amendment rule will conform the rule to the current statutory language in s. 102.18(1)(e), Stats.

DWD 80.21(4) prohibits testimony from expert witnesses concerning wage earning impairment (loss of earning capacity) to be received into evidence at a hearing unless the party offering the testimony notified the department and the other parties to the case of the intent to produce this testimony and the names of the witnesses involved. The rule requires that the notice must be given at least 30 days before a scheduled hearing.

Testimony or certified medical reports from expert witnesses offered by the party that raised the loss of earning capacity issue must be excluded from evidence under s. 102.17(1)(b), Stats., if that party failed to notify the department and the other parties of interest at least 60 days before the hearing date of that party's intent to provide the testimony or reports and the names of the expert witnesses involved. Section 102.17(7)(b), Stats., also provides for the exclusion from evidence testimony or reports from expert witnesses offered by a party in response to the loss of earning capacity issue, if the responding party failed to notify the department and other parties of the intent to provide the testimony or reports and the names of the expert witnesses at least 45 days before the hearing date. The department is given the authority in s. 102.17(7)(c), Stats., to waive the 60 and 45 days notice requirements for good cause where no party is prejudiced by the delay.

The notice specified in the rule is significantly different from the notice requirements set forth in s. 102.17(7)(b), Stats. The language of the proposed amendment will conform the rule to the current statutory notice requirements in s. 102.17(7)(b), Stats.

DWD 80.24 requires that a copy of a statement must be provided to the employee when the employee gives a signed statement which in any way concerns his or her worker's compensation claim. The rule also requires that when a statement is taken by a recording device, a copy of the entire statement must be given to the employee or his or her attorney within a reasonable time after an application for hearing is filed with the actual recording available as an exhibit if a formal hearing is held. Use of the statement in any manner in connection with the employee's claim is precluded if the employer or insurance carrier fails to comply with the rule.

Section 102.123, Stats., Chapter 37, Laws of 2001, effective January 1, 2002, codified the conditions for use of statements by employees in worker's compensation cases. Section 102.123, Stats., requires that when an employee provides an employer or insurance carrier a signed statement relating to the claim, the employer or insurance carrier must give a copy of the statement to the employee within a reasonable time. The rule does not specify a time by which the employer or insurer must give a copy of the signed statement to the employee. Section 102.123, Stats., also requires that when the statement is recorded, the employer or insurer must reduce the statement to writing after a request by the employee or his or her agent or attorney and provide a written copy of the

entire statement within a reasonable time after the statement is taken. The rule specifies that the employer or insurer is required to give the employee or his or her agent or attorney a written copy of a recorded statement within a reasonable time after an application for hearing is filed. Section 102.123, Stats., does not require the filing of an application for hearing before providing a written copy of a recorded statement.

The requirements for use of statements by employees concerning claims have been codified in s. 102.123, Stats. Repeal of the rule is necessary since use of statements by employees was codified by creation of s. 102.123, Stats., and the public policy consideration of the need to avoid confusion generated by different requirements contained in the rule and s. 102.123, Stats.

SECTION 1. DWD 80.05 is amended to read:

DWD 80.05 Procedure on claim. (1) In cases of disputes in matters coming under the jurisdiction of ch. 102, s. ~~101.47~~, 106.25, ~~56.21~~ 303.07(7), 303.21, or 40.65, Stats., any party to the dispute may apply to the department for relief and the department shall make such order or award as shall be lawful and just under the circumstances.

SECTION 2. DWD 80.15 is repealed and recreated to read:

DWD 80.15 Payments after an order. Except as provided in s. 102.21, Stats., if the department orders a party to pay an award of compensation, the party shall pay the award no later than 21 days after the date on which the order is mailed to the last-known address of the party, unless a party files a petition for review under s. 102.18 (3), Stats. This section applies to all awards of compensation ordered by the department, whether the award results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department.

SECTION 3. DWD 80.21 (4) is repealed and recreated to read:

DWD 80.21 (4) No testimony or reports from expert witnesses on the issue of loss of earning capacity may be received unless the party offering the evidence has notified the department and the other parties of interest of the party's intent to provide the testimony or reports and the names of expert witnesses involved as required under the provisions of s. 102.17(7), Stats.

SECTION 4. DWD 80.24 is repealed.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.