

CR 82-45

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS)

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, James J. Gosling, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Workers' Compensation were duly

*(Subject)*  
approved and adopted by this department on 8/5/82.  
*(Date)*

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 9:00 a.m. in the city of Madison, this 5th day of August A.D. 1982.

James J. Gosling  
Secretary

10-1-82

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# ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 102.15(1) and (2), Stats., the Department of Industry, Labor and Human Relations hereby  creates;  amends;  repeals and recreates; and  repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. 80 Worker's Compensation  
(Number) (Title)

The attached rules shall take effect on the first day of the month  
following publication in the Wisconsin Administrative Register, pursuant to section  
227.026, Stats.

Adopted at Madison, Wisconsin, this 5<sup>th</sup>  
day of August, A.D., 1982.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

James J. Anselmi  
Secretary

ADMINISTRATIVE RULE OF THE DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS  
amending s. Ind 80.02(1), 80.05, 80.06, 80.11 and 80.22(3); creating s. Ind 80.21(2),  
(3) and (4), 80.32(1) NOTE, 80.34, 80.39, 80.41 to 80.49, 80.51, 80.60, 80.61,  
80.65 and and 80.70; repealing s. Ind 80.04 and 80.16 to 80.19; repealing and  
recreating s. Ind 80.01, 80.02(2), 80.03, 80.08, 80.09, 80.12, 80.14(1)(a) and  
(b), 80.22(6), 80.27, 80.32(1) and 80.50; and renumbering and amending s. Ind  
80.21(1);

RELATING TO RULES CONCERNING:     Worker's Compensation

Statutory Authority

Pursuant to s. 102.15(1) and (2), Wis. Stats., the Department of Industry,  
Labor and Human Relations hereby adopts administrative rules as follows:

Section 1. Ind 80.01 is repealed and recreated to read:

Ind 80.01 DEFINITIONS. (1) "Act," "compensation act" or worker's compensation act" means ch. 102, Stats.

(2) "Department" means the department of industry, labor and human relations.

(3) "Commission" means the labor and industry review commission.

Section 2. Ind 80.02(1) is amended to read:

Ind 80.02 REPORTS. (1) Employers. Employers under covered by the provisions of the ~~worker's compensation act~~ ch. 102, Stats., shall, within one day after the ~~fatal-termination~~ death of an employe due to an accident or industrial disease shall, make a brief report of this occurrence to the department by telegraph, telephone or by letter. They shall also make a report on a form WC-12 on or before the fourth day after the accident or beginning of a disability from occupational disease upon every accident or disease causing death or a disability which exists beyond the third day after the employe leaves work as a result of the accident or disease. (s. 102.43, Stats.)

Section 3. Ind 80.02(2) is repealed and recreated to read:

Ind 80.02(2) Self-insured employers and Insurance Companies. Pursuant to s. 102.37, Stats., for injuries which require the first report of injury set forth in Ind 80.02(1), self-insured employers and insurance companies shall:

(a) Make a supplementary report on a form WC-13 on or before the fourteenth day following that on which the injury occurred, a copy of the WC-12 shall be attached to the initial WC-13, and if the wage is less than the maximum wage as defined by s. 102.11(1), Stats., submit with the form WC-13, wage information on form WC-13a. If wage information is not available at the time the WC-13 is submitted, a notation should be made on the form WC-13 that a form WC-13a will be submitted at a later date. If an employe restricts his or her availability on the labor market to part-time employment and is not actively employed full time elsewhere, a statement confirming this intention must accompany the WC-13a. This statement is not required if the employe is under the age of 16.

(b) Make a report within 7 days from the date that payments are stopped for any reason. If any payments are stopped for a reason other than the employe's return to work, an explanation of such cessation must be provided to the department and the employe. The self-insured employer or insurance carrier shall advise the employe as to what the employe must do to reinstate payments.

(c) Make a report to the department on form WC-13 with a copy to the employe if payment of compensation is changed from temporary total disability or temporary partial disability to a permanent disability basis. Similar report shall be made if temporary disability benefits are reinstated.

(d) Notify the department and the employe immediately if liability for payment of compensation is denied, giving the reason for such denial. The notice shall advise the employe of the right to a hearing before the department.

(e) Make a final report on a form WC-13 when final payment of compensation has been made. A practitioner's report is necessary if temporary disability exceeds three weeks or if permanent disability has resulted. Copies of the final WC-13 form and the final practitioner's report must be sent to the employe.

(f) Notify the department and the employe if the employe fails to return to a practitioner for final examination. The notice shall also advise the employe that in order to determine permanent disability, if any, the final examination is necessary.

(g) Submit a final receipt as proof of payment of any increased compensation due to an injured employe.

(h) File a current WC-13 form indicating all payments to date and the periods of time for which these payments were made when submitting a stipulation or compromise, or at the time of hearing.

(i) Make immediate report to the department of any amputation which will require an artificial member or appliance.

Section 4. Ind 80.03 is repealed and recreated to read:

Ind 80.03 COMPROMISE. (1) Whenever an employer and an employe enter into a compromise agreement concerning the employer's liability under ch. 102, Stats., for a particular injury to that employe, the following conditions shall be fulfilled:

(a) The compromise agreement shall be in writing, or in the alternative, oral on the record at the time of scheduled hearing;

(b) The compromise agreement shall be mailed to the department unless made on the record;

(c) The compromise agreement must be approved by the department; and

(d) No compromise agreement may provide for a lump sum payment of more than the incurred medical expenses plus sums accrued as compensation or death benefits to the date of the agreement where the compromise settlement in a claim other than for death benefits involves a dispute as to the extent of permanent disability. Lump sum payments will be considered after approval of the compromise in accordance with s. Ind 80.39.

(e) Compromise agreements which provide for payment of a lump sum into an account in a bank, trust company or other financial institution, which account is subject to release as the department directs, will be authorized.

(2) If the department approves the compromise agreement, an order shall be issued by the department directing payment in accordance with the terms of the compromise agreement. No compromise agreement is valid without an order of the department approving the agreement.

Section 5. Ind 80.04 is repealed.

Section 6. Ind 80.05 is amended to read:

Ind 80.05 PROCEDURE ON CLAIM. (1) In cases of disputes in matters coming under the jurisdiction of ~~the department~~ ch. 102, ss. 66.191, 101.47, 56.21, or 40.65, Stats., either 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 in the premises under the circumstances.

(2) In all such cases under sub. (1), the party complaining shall file his or her application with the department, along with sufficient copies to be served of the application for service on the adverse party parties. The department shall thereupon serve ~~such~~ the adverse party parties with a copy of ~~such~~ the application and such the adverse party parties shall file his an answer thereto to the application with the department within 40 20 days after such the service and likewise serve a copy of such the answer on the party making application. The department ~~will~~ shall thereupon notify the parties of the time and place of hearing, at least 10 days prior to ~~such the hearing.~~ If no answer is mailed by the respondent within 20 days of mailing by the department, the department may issue an order by default, without hearing, in accordance with the application, as provided by s. 102.18(1)(a), Stats. (s. 102.17, Wis. Stats.)

Section 7. Ind 80.06 is amended to read:

Ind 80.06 PARTIES. The parties to the controversy shall be known as the applicant and the respondent. The party filing an application for relief shall be known as the applicant and the an adverse party as the respondent. Either Any party may appear in person or by an attorney or agent.

Section 8. Ind 80.08 is repealed and recreated to read:

Ind 80.08 AMENDMENTS. Amendments may be made to the application or answer by letter mailed to the department prior to the date the notice of hearing is mailed. Copies of the letter shall be sent directly to the other parties. The letter shall state reasons for the amendment.

Section 9. Ind 80.09 is repealed and recreated to read:

Ind 80.09 WITNESS ATTENDANCE; EXTENSION OF TIME AND POSTPONEMENT.  
(1) Upon receipt of the notice of hearing, it is the responsibility of each party to contact any witnesses necessary for that party's case and to make arrangements to have them attend the hearing.

(2) Requests for postponements and continuances shall be considered by the department only if such requests are received within a reasonable time before the date of the hearing.

(3) The department shall grant postponements and continuances only because of extraordinary circumstances. Neither the scheduling problems nor the convenience of the parties shall be considered extraordinary circumstances.

(4) A postponement, continuance or extension of time may not be granted upon the mutual agreement of the parties without the consent of the department.

Section 10. Ind 80.11 is amended to read:

Ind 80.11 DEPOSITIONS. At the discretion of the department Depositions may be taken and used upon in any hearing where the convenience of the witnesses or the parties may so require, only in accordance with s. 102.17(1)(f), Stats. Such ~~These~~ depositions shall be taken in the same manner as in courts of record. Depositions for the purpose of discovery before the hearing are specifically prohibited. ~~by law, with certain exceptions, except as provided by section 102.17(1)(f) of the~~ Wis. Stats.

Section 11. Ind 80.12 is repealed and recreated to read:

Ind 80.12 RULES OF PRACTICE; SELECTION OF HEARING SITE. (1)(a) The rules of practice before the department shall be such as to secure the facts in as direct and simple a manner as possible.

(b) The examiner may limit testimony to only those matters which are disputed.

(c) The examiner may not allow into the record, either on direct or cross-examination, redundant, irrelevant or repetitive testimony. Hearsay testimony may be admitted at the discretion of the examiner provided such testimony has probative value.

(2) The department may select places for a hearing after considering the geographical location and volume of claims in an area. A list of sites will be furnished upon request to interested parties by the department. From this list, a hearing site shall be selected at the discretion of the department. The department, in determining the site of the hearing, shall consider the following:

(a) The location choice of the applicant;

(b) The location of the office of the treating practitioner or practitioner appointed by the department under the provisions of ss. 102.17, or 102.13(3), Stats.; and

(c) The location where the injury occurred.

Section 12. Ind 80.14(1)(a) and (b) are repealed and recreated to read:

Ind 80.14(1)(a) After the commencement of an action to review an order of the commission in circuit court, a copy of the hearing record will be furnished to the plaintiff or other parties upon payment to the department of the reporter's fees set forth in s. 757.57(5), Stats., and not as set forth in s. 757.57(2), Stats.

(b) Transcripts of the hearing may not be provided until after commencement of an action in circuit court.

Section 13. Ind 80.16 to 80.19 are repealed.

Section 14. Ind 80.21 is renumbered 80.21(1) and amended to read:

Ind 80.21 REPORTS BY PRACTITIONERS AND EXPERT WITNESSES. (1) Upon the request of the department, any party in interest to a claim under ~~the workmen's compensation act~~ ch. 102, Stats. shall furnish to the department and to all parties in interest with copies of all ~~physicians' reports by practitioners and expert witnesses~~ in their possession or procurable by them. ~~When deemed advisable by the department, copies of such reports may be furnished to other parties in interest.~~

Section 15. Ind 80.21(2), (3) and (4) are created to read:

Ind 80.21 (2) In cases involving nonscheduled injuries under 102.44(2) or (3), Stats., any party in interest to a claim under the act shall, upon the request of the department, also furnish to the department and to all parties in interest any reports in their possession or reasonably available to them relating to the loss of earning capacity as set forth in s. Ind 80.34.

(3) Any party who does not comply with the request of the department under subs. (1) or (2) shall be barred from presenting the reports or the testimony contained therein at the hearing.

(4) No testimony concerning wage earning impairment shall be received unless the party offering such testimony has notified the department and the other parties in interest of the intent to produce such testimony. The names of the witnesses who are going to testify as to wage earning impairment shall also be furnished to the department and the parties in interest. Such notification shall be given at least 30 days prior to a scheduled hearing.

Section 16. Ind 80.22(3) is amended to read:

Ind 80.22(3) An applicant shall be informed of the provisions of s. 102.17(1)(as)(d), Wis. Stats., and the department's rules and also that a form for reporting will be supplied to him the applicant upon request.

Section 17. Ind 80.22(6) is repealed and recreated to read:

Ind 80.22(6) Simultaneously with the filing of a WC-16B form or a verified report of a vocational expert with the department, a party shall serve copies upon all other parties in interest. Service upon the designated representative of a party shall be deemed service upon the party. Service upon the insurance carrier for an employer shall be deemed service upon the employer. However, if a party does not have a representative, the department may elect to make service upon other parties.

Section 18. Ind 80.27 is repealed and recreated to read:

Ind 80.27 FORMS. A sample copy of all forms referred to in these rules may be obtained upon a request to the Worker's Compensation Division, Department of Industry, Labor and Human Relations, Post Office Box 7901, Madison, Wisconsin 53707.



Section 19. Ind 80.32(1) is repealed and recreated to read:

Ind 80.32(1) The disabilities set forth in this section are the minimums for the described conditions. However, findings of additional disabling elements shall result in an estimate higher than the minimum. The minimum also assumes that the member, the back, etc., was previously without disability. Appropriate reduction shall be made for any preexisting disability.

Section 20. Ind 80.32(1) Note is created to read:

Note: An example would be where in addition to a described loss of motion, pain and circulatory disturbance further limits the use of an arm or a leg. The removal of a semi lunar cartilage in a knee with less than a good result would call for an estimate higher than 5% loss of use of the leg at the knee. The same principle would apply to laminectomies or spinal fusions. The schedule of minimum disabilities contained in this section was adopted upon the advice of the orthopedic advisory committee.

Section 21. Ind 80.34 is created to read:

Ind 80.34 LOSS OF EARNING CAPACITY. (1) Any department determinations as to loss of earning capacity for injuries arising under s. 102.44(2) and (3), Stats., shall take into account the effect of the injured employe's permanent physical and mental limitations resulting from the injury upon present and potential earnings in view of the following factors:

- (a) Age;
- (b) Education;
- (c) Training;
- (d) Previous work experience;
- (e) Previous earnings;
- (f) Present occupation and earnings;
- (g) Likelihood of future suitable occupational change;
- (h) Efforts to obtain suitable employment;
- (i) Willingness to make reasonable change in a residence to secure suitable employment;
- (j) Success of and willingness to participate in reasonable physical and vocational rehabilitation program; and
- (k) Other pertinent evidence.

Section 22. Ind 80.39 is created to read:

Ind 80.39 ADVANCE PAYMENT OF UNACCRUED COMPENSATION. (1) The department may order partial or full payment of unaccrued compensation to an employe or his or her dependents pursuant to s. 102.32(6), Stats., upon consideration of the following factors:

- (a) The length of time since the injury;
- (b) The total income of the employe or the dependent;
- (c) The income of others in the employe's or the dependent's household;
- (d) The age of the employe or the dependent;
- (e) The other available assets of the employe or the dependent;
- (f) The loss of benefits because of interest credit due to self-insured employer or insurance carrier;
- (g) The purpose for which the advancement is requested;
- (h) The other financial obligations of the employe or the dependent;
- (i) The employment status of the employe or the dependent;
- (j) If the advancement is requested for the purchase of real estate, the cost of the real estate and availability of other necessary financing for the real estate;
- (k) The employe's or the dependent's previous experience in and likelihood of success in a proposed business venture;
- (l) The probable income and security of any proposed investment; and
- (m) Other information indicating whether an advancement is in the best interest of the applicant.

Section 23. Ind 80.41 is created to read:

Ind 80.41 COMPUTATION OF MONTHLY SALARY AND REIMBURSEMENT TO RETIREMENT FUND UNDER SECTION 66.191. (1) Fringe benefits shall not be included in the computation of salary, earnings or wages under s. 66.191, Stats., unless such benefits are income for Wisconsin income tax purposes.

(2) An eligible employe under s. 66.191, Stats., shall file with the department before an award is entered, as provided in s. 66.191, Stats., a waiver of disability annuity payments which may be due under s. 40.63, Stats., and further shall consent to reimbursement to the Wisconsin retirement fund of all disability benefits recovered under the provisions of s. 40.63, Stats.

Section 24. Ind 80.42 is created to read:

Ind 80.42 VOCATIONAL REHABILITATION; REPORTING REQUIREMENT. In order to determine whether or not an employe should be referred to the division of vocational rehabilitation for services, the self-insured employer or insurance carrier shall notify the department whenever temporary total disability will exceed 13 weeks. This report shall be made within 13 weeks from the date of the initial disability or when such disability can be determined, whichever is earlier, and shall include a current practitioner's report.

Section 25. Ind 80.43 is created to read:

Ind 80.43 FEES AND COSTS. Section 102.26, Stats., provides for a maximum attorney's fee of 20 percent of the amount in dispute. Section 102.26(3), Stats., places upon the department the responsibilities for fixing the fee and providing for the direct payment of the fee. In the exercise of this responsibility, the department shall take into account the following considerations:

(1) The department shall balance the need to preserve the maximum amount of benefits for the injured employe and the need for fees which are sufficient to insure adequate representation for claimants under ch. 102, Stats.

(2) Fees shall not be allowed on medical expenses to the extent that other sources, such as group insurance, are available to pay such expenses.

(3) Fees for permanent total disability shall not be allowed on compensation awards due beyond 500 weeks.

(4) The existence of a dispute under s. 102.26(2), Stats., is dependent upon a disagreement after the employer or insurer has had adequate time and information to take a position on liability. Neither the holding of a hearing nor the filing of an application for a hearing alone may determine the existence of a dispute. However, a finding that a dispute exists shall not be precluded by an employer's or insurer's purposeful inactivity on the issue of liability.

(5) Where representation is the result of the representative's employment by an insurance carrier, an employer, a union, a social service agency or a public agency, the representative may not charge a fee on a contingency basis.

(6) Where there has been successive representation by various representatives, the division of fees by the department shall take into account the relative value of the services performed by each representative, any concessions of disability, offers of settlement and other matters.

Section 26. Ind 80.44 is created to read:

Ind 80.44 WITNESS FEES AND TRAVEL REIMBURSEMENT. The fees and travel reimbursement of witnesses and interpreters for attending a hearing before an examiner of the department, shall be the statewide rate currently paid under s. 885.05(1)(bn), Stats., notwithstanding any local county variations.

Section 27. Ind 80.45 is created to read:

Ind 80.45 RENEWED PERIOD OF TEMPORARY TOTAL DISABILITY. A period of temporary total disability commencing more than two years after the date of injury may not be considered to be a renewed period of temporary total disability unless there has been an interruption in the period of temporary total disability. The employe shall have had medical authorization and physical ability to return to work before it shall be deemed that there has been an interruption of continuous disability.

Section 28. Ind 80.46 is created to read:

Ind 80.46 CONTRIBUTION TO SUPPORT OF UNESTRANGED SURVIVING PARENT. In assessing support under s. 102.48, Stats., the payment of room and board by a child to his or her parent shall not be considered as contribution to support of the parent.

Section 29. Ind 80.47 is created to read:

Ind 80.47 MEDICAL RELEASE OF EMPLOYE FOR RESTRICTED WORK IN THE HEALING PERIOD. Even though an employe could return to a restricted type of work during the healing period, unless suitable employment within the physical and mental limitations of the employe is furnished by the employer or some other employer, compensation for temporary disability shall continue during the healing period.

Section 30. Ind 80.48 is created to read:

Ind 80.48 REASSIGNMENT OF DEATH BENEFITS. When a spouse who is entitled to death benefits remarries, the department shall reassign the death benefits to the children designated in s. 102.51(1), Stats., and 102.49, Stats., unless a showing is made that undue hardship would result for the spouse because of the reassignment.

Section 31. Ind 80.49 is created to read:

Ind 80.49 VOCATIONAL REHABILITATION BENEFITS. (1) The primary purpose of vocational rehabilitation benefits is to provide a method to restore an injured worker as nearly as possible to the worker's preinjury earning capacity and potential.

(2) The determination of eligibility for vocational rehabilitation training and whether a person is a suitable subject for training is the responsibility of the vocational rehabilitation division of the department of health and social services.

(3) The determination of whether an industrial injury creates a necessity for vocational rehabilitation training is the responsibility of the worker's compensation division of the department. The division shall utilize the following presumptions:

(a) If an injury causes permanent disability entitling an employe to compensation for permanent disability of 100 or more weeks, it shall be presumed that the injury necessitates vocational rehabilitation training unless a showing is made to the contrary.

(b) If an injury causes no permanent disability or a permanent disability entitling an employe to less than 100 weeks of compensation for permanent disability, it shall be presumed that the injury did not necessitate vocational rehabilitation training unless a showing is made to the contrary.

(4) Extension of vocational rehabilitation benefits beyond 40 weeks may not be authorized if the purpose of such further training is primarily to improve upon preinjury earning capacity rather than restoring it.

Section 32. Ind 80.50 is repealed and recreated to read:

Ind 80.50 COMPUTATION OF PERMANENT DISABILITIES. (1) In computing permanent partial disabilities, the number of weeks attributable to more distal disabilities shall be deducted from the number of weeks in the schedule for more proximal disabilities before applying the percentage of disability for the more proximal injury, except that:

(a) Such a deduction shall not include multiple injury factors under s. 102.53, Stats.; and

(b) Such a deduction shall include preexisting disabilities.

(2) The number of weeks attributable to scheduled disabilities shall be deducted from 1,000 weeks before computing the number of weeks due for a non-scheduled disability resulting from the same injury. This deduction shall not include multiple injury factors under s. 102.53, Stats.

(3) Multiple injury factors under s. 102.53, Stats., do not apply to compensation for disfigurement under s. 102.56, Stats.

Section 33. Ind 80.51 is created to read:

Ind 80.51 COMPUTATION OF WEEKLY WAGE. Pursuant to s. 102.11, Stats:

(1) In determining daily earnings, if the number of hours a full-time employe worked had been either decreased or increased for a period of at least 90 total days prior to the injury, then this revised schedule worked during those 90 days shall be considered to be normal full-time employment.

(2) When an employe furnishes his or her truck to the employer and is paid by the employer in gross to include operating expenses, one-third of that gross sum is considered as wages except as a showing is made to the contrary.

(3) Prisoners injured in prison industries are considered to be earning the maximum average weekly earnings under the provisions of s. 102.11, Stats., except as a showing is made to the contrary.

(4) The 30 hour minimum workweek under s. 102.11(1)(f), Stats., does not apply to a part-time employe unless the employe is a member of a regularly scheduled class of part-time employes. In all other cases part-time employment is on the basis of normal full-time employment in such job. However, this subsection does not apply to part-time employes defined in s. 102.11(1)(f), Stats., who restrict availability on the labor market. As to the employes so defined, those wages will be expanded to the normal part-time or full-time wages unless the employer or insurance company complies with s. Ind 80.02(2)(a).

Section 34. Ind 80.60 and 80.61 are created to read:

Ind 80.60 EXEMPTION FROM DUTY TO INSURE (SELF-INSURANCE).

(1) DEFINITIONS. In this section:

(a) "Self-insurance" means exemption from the duty to insure, as provided in s. 102.28(2)(b), Stats.

(b) "Full-insurance" means the insurance of all liability by one policy, as required in s. 102.31(1)(a), Stats.

(c) "Divided-insurance" means consent to the issuance of two or more policies, as provided in s. 102.31(1), Stats.

(d) "Partial-insurance" means self-insurance of a part of the liability and consent to the issuance of one or more policies on the remainder of the liability, as provided in ss. 102.28(2)(b) and 102.31(1), Stats.

(e) "Excess insurance" means catastrophic insurance for employers granted self-insurance, and is not full-insurance, self-insurance, partial-insurance or divided-insurance.

(2) EXCESS INSURANCE. Excess insurance may be carried without further order of the department.

(3) REQUIREMENTS FOR THE STATE, ITS POLITICAL SUBDIVISIONS, AND STATE AND NATIONAL BANKS. (a) The state, its political subdivisions, and state and national banks may self-insure without further order of the department, if they are not partially-insured or fully-insured under one or more policies, and if they agree to report faithfully all compensable injuries and agree to comply with ch. 102, Stats., and rules of the department. However, any such employer desiring partial-insurance or divided-insurance must submit an application to the department and be given special consent as described in s. Ind 80.61.

(b) Self-insurance granted under s. Ind 80.60(3)(a) is subject to revocation under s. 102.28(2)(c), Stats. Once the privilege of self-insurance is revoked, further self-insurance may be authorized only under the procedures set forth in s. Ind 80.60(4).

(4) REQUIREMENTS FOR OTHER EMPLOYERS. (a) Application. Employers, other than those specified in sub. (3), desiring self-insurance shall submit an application on department form WC A-19.3 to the department. If the application is approved, the department shall permit self-insurance by written order. Employers granted self-insurance shall submit renewal applications on a department form to the department annually. Self-insurance shall expire as of June 30 of each subsequent year.

(b) Minimum requirements. The minimum requirements for self-insurance are:

1. The employer shall be a corporation authorized to do business in Wisconsin and registered in the office of the secretary of state.

2. The employer shall have an average employment of at least 100 persons working in Wisconsin at the time the initial application is filed. All or some of these 100 persons may be employed in Wisconsin by its parent corporation, or by subsidiary or affiliated companies of the employer.

3. The employer shall own and maintain lands, buildings and plants in Wisconsin at least equal to a total net book value of \$500,000 or \$500 per employe, whichever amount is greater, including the net book value of the lands, buildings and plants owned in Wisconsin by the employer and its parent and subsidiary companies, less liens, if the employer is a corporation which is a wholly or majority owned subsidiary. The employer shall notify the department of any sale or transfer of this property which reduces the net book value below these minimum amounts.

4. If the employer is a corporation which is a majority or wholly owned subsidiary, it shall submit to the department a guaranty of payments by the ultimate or top parent company on a department form and a certified copy of the resolution adopted by the board of directors of the parent corporation.

5. The employer shall submit a certified copy of the resolution adopted by the board of directors authorizing the execution of the application and the agreement shall be submitted when the initial application is submitted.

6. The employer shall submit a copy of the latest financial report prepared for the stockholders of the corporation or its parent company and a copy of the latest annual 10-K report filed by the corporation or its parent company with the U. S. securities and exchange commission with the submission of the initial and each renewal application. If neither report is prepared, the corporation shall submit an independently certified current financial statement together with such other financial information as the department may require to substantiate the financial data.

7. The employer shall make adequate arrangements in Wisconsin for claims administration under ch. 102, Stats. and this chapter, and for occupational safety and health, which are acceptable to the department.

8. The employer shall maintain acceptable performance in prompt payment and reporting of claims under ch. 102, Stats.

9. The employer shall maintain acceptable safety and health performance as measured by worker's compensation statistics and other occupational injury and illness information, including but not limited to the employer's OSHA incidence rating.

10. The employer shall furnish satisfactory security such as guaranty bond, deposit of securities, reserves, excess worker's compensation insurance, financial reports and reports on outstanding liabilities before and after self-insurance is granted, terminated or revoked, as the department requires to assure the payment of all past, present, existing and potential worker's compensation liability.

(c) General criteria to be considered by the department. The following factors may be used by the department, in addition to the minimum requirements, in evaluating the qualifications of the employer, the amount and type of guaranty and securities, and the number and kind of special reports to assure the payment of all worker's compensation claims:

1. The financial strength and liquidity of the employer, its profit and loss history, and changes in other key financial conditions affecting the employer's ability to promptly pay all compensation;

2. The employer's organizational structure, management background, kind of business, length of time in business, and any contemplated or newly implemented reorganization including but not limited to merger, consolidation, buying of new corporation, divesting or spinning off of current operations, and other corporate changes;

3. Tangible property of the employer and its subsidiaries or parent corporation, including but not limited to lands, buildings and plants owned and maintained in Wisconsin;

4. The employer's bond or other business ratings;

5. The number of employer's employees, payroll and hours worked in Wisconsin;

6. The claims administration and safety and health engineering programs maintained by the employer;

7. The compensation loss history, including reported losses, incurred losses, paid losses, unpaid losses, outstanding liability, and compensation premium of the employer;

8. Excess insurance, surety bond, deposit of securities, guaranty by parent company, and other guarantees and security pledged by the employer;

9. The employer's performance indicators under ch. 102, Stats. including, but not limited to, promptness or time taken in making first indemnity payments, promptness or time taken in submitting first reports, and injury and illness incidence and severity rates; and

10. The financial and performance ratios, characteristics and trends for the employer or the consolidated group of employers to which the employer belongs as compared with the financial and performance ratios, characteristics and trends for other employers and for the particular or most similar industry in which the employer or the employer's consolidated group is involved.

(d) Surety bond, deposit of securities, excess insurance, or other security. The required minimum bond, minimum amount of cash or securities, minimum excess insurance upper limit, maximum excess insurance retention, or other security satisfactory to the department, shall be determined after the application has been reviewed and analyzed by the department. The employer shall use the required department bond and deposit agreement form.

1. Guaranty bonds shall be written by companies authorized to transact surety business in Wisconsin.

2. Cash or securities shall be deposited with banks qualified to exercise trust powers in Wisconsin. These securities shall be negotiable and converted into cash at any time by the depository at request of the department.

3. If excess insurance is required by the department, it shall be procured from a licensed excess insurance worker's compensation company, and written on the basis of rates and policy form filed with and approved by the state of Wisconsin commissioner of insurance. The policy for the required excess insurance shall be filed with and approved by the Wisconsin compensation rating bureau.



(e) Enjoining and restraining employer. Whenever the department has probable cause to believe that an employer currently or previously granted self-insurance for its parent or subsidiary company is liquidating and distributing its assets to its stockholders, or is selling or is about to sell the tangible property it owns and maintains in Wisconsin and the employer or its parent or subsidiary company is moving or is about to move its operations out of Wisconsin, without providing for the payment under the terms of the agreement in the self-insurance application or guaranty form it has executed and submitted to the department, the department may, through the attorney general cause a petition to be filed to enjoin and restrain the employer or its parent or subsidiary company from engaging in such action.

Ind 80.61 DIVIDED-INSURANCE AND PARTIAL INSURANCE REQUIREMENTS UNDER SECTIONS 102.31(1) AND 102.31(6), FOR ALL EMPLOYERS, INCLUDING EMPLOYERS PARTICIPATING IN A JOINT VENTURE AND CONTRACTORS WORKING ON A WRAP-UP PROJECT. (1) DEFINITIONS. In this section: (a) "Divided-insurance" means consent to the issuance of two or more policies, as provided in s. 102.31(1), Stats.

(b) "Partial-insurance" means self-insurance of a part of the liability and consent to the issuance of one or more policies on the remainder of the liability, as provided in ss. 102.28(2)(b) and 102.31(1), Stats.

(2) REQUIREMENTS. (a) The requirements for partial-insurance and divided-insurance by two or more insurance companies are as follows:

1. Submission of an application on department form WC A-19.3, WC A-19.4 or WC A-19.4 M to the department. If the application is approved, the department shall permit partial-insurance or divided-insurance by written order. In the application, the employer shall agree to assume full responsibility to immediately make all payments of compensation and medical expense as the department may require, pending a final determination as to liability between the insurance carriers under divided-insurance or between the employer and the insurance carrier under partial-insurance, if a dispute should arise as to which insurance company or whether the employer or insurance company is responsible for a particular injury or illness sustained during the time the written order is in effect.

2. If the applicant is a political subdivision of the state, it shall submit a certified statement by the attorney for the political subdivision which cites the legal authority for executing the application and agreement when the initial application is submitted.

3. If the applicant is a corporate employer, it shall submit a certified copy of a resolution duly adopted by its board of directors authorizing and directing the execution of the application and agreement when the initial application is submitted.

(b) Employers desiring divided-insurance by one insurance company may file a letter of application in lieu of the department form. The employer shall include the following information in the letter of application for each division or operating unit which is or will be separately insured by a separate policy:

1. The name of the division or operating unit;
2. The usual number of employees;
3. The worker's compensation policy number; and
4. The beginning and ending date of the policy period.

(c) Renewal applications shall be submitted to the department on a department form no later than 3 months prior to the expiration date of the department's order. Partial-insurance and divided-insurance shall expire on the date specified in the order unless continued in force by further order, as the department deems necessary.

(3) DIVIDED-INSURANCE FOR DESIGNATED CARRIER WRAP-UP CONSTRUCTION PROJECTS. (a) Definitions. In this subsection:

1. "Bureau" means the Wisconsin compensation rating bureau.
2. "Designated wrap-up carrier" means the designated carrier or insurance company which insures the wrap-up project under ch. 102, Stats.
3. "Job site" means the premises and vicinity upon which the operations covered under the contract with the contractor or subcontractor are to be performed.
4. "Material supplier" means vendors, suppliers, material dealers, and others whose function is solely to supply or transport material, equipment, or parts to or from the construction site.
5. "Owner" means the person, firm, corporation or municipality having lawful possession of the construction project.
6. "Regular carrier" means the insurance company which insures all operations of a contractor or subcontractor under ch. 102, Stats., except for work done on the wrap-up project.
7. "Subcontractor" means a person who contracts with a contractor and also includes any subcontractor of a subcontractor.
8. "Wrap-up project" means a construction project wherein the owner selects a carrier, and this carrier issues a separate worker's compensation policy to each contractor and subcontractor scheduled to work on the project for work which will be done on the project, and where the owner pays for each such policy.

(b) Minimum wrap-up project requirements. Wrap-up projects shall comply with the following:

1. The estimated project cost of completion shall be equal to at least \$25 million. The estimated project cost of completion shall be the estimate of the costs of the total construction contracts to be awarded by the owner on the wrap-up project.

2. The estimated standard worker's compensation manual premium shall be equal to \$250,000 or more.

3. The project shall be confined to a single location except that in connection with the building of a road, bridge, pipeline, tunnel or waterway, the entire job is considered as a single location to the extent that there is single ownership or a single contractor.

4. The project shall have a definite completion date involving work to be performed continuously until completion and may not be extended to include maintenance work following completion.

5. All contractors and subcontractors shall be included under the wrap-up program.

6. All material suppliers shall be included in the safety program on the job site while unloading and handling material and performing other work, but material suppliers shall be excluded from the rest of the wrap-up program.

7. The submission of all bids and the letting of all contracts shall be on an ex-insurance basis.

(c) Minimum requirements for owner. The owner shall comply with the following requirements on a wrap-up project:

1. The wrap-up plan and application shall be submitted on department form WC A-19.5 W-U to the department. If the application is approved, the department shall permit divided-insurance on the wrap-up project.

2. The owner shall comply with all conditions and agreements in the application, including, but not limited to:

a. The reimbursement of the department's costs incurred because of the wrap-up project;

b. The selection of a licensed and qualified designated wrap-up carrier having a record of compliance with the requirements of ch. 102, Stats., which is acceptable to the department;

c. Informing each contractor and subcontractor and each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;

d. The submission of each contractor's and subcontractor's application form WC A-19.4 W-U to the bureau prior to the time the contractor or subcontractor first starts work on the wrap-up project;

e. The notification of department and bureau of any entity status change resulting from ensuing reorganization;

f. The assumption of responsibility for immediately making direct compensation payments if a dispute arises over coverage; and

g. The payment of an employe's attorney's fees and lost wages resulting from a dispute.

3. If the owner is a corporation, it shall submit a certified copy of the resolution by the board of directors authorizing and directing the execution of the application and agreement.

4. If the owner is a subsidiary of a corporation, it shall submit a guaranty and agreement by the owner's ultimate or top parent company agreeing to promptly satisfy all of the requirements and obligations assumed by the owner on the wrap-up project in case of default by the owner.

(d) Minimum requirements for designated wrap-up carrier.

1. The designated wrap-up carrier shall submit an application on department form WC A-19.6 W-U to the department. If the application is approved, the department shall permit divided-insurance for each contractor and subcontractor scheduled to work on the wrap-up project.

2. The designated wrap-up carrier shall comply with all conditions and agreements in the application, including, but not limited to:

- a. Informing each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;
- b. The issuance of each individual contractor's and subcontractor's wrap-up policy prior to the time the contractor and subcontractor begin work on the job site;
- c. The notification of department and bureau of any entity status change resulting from ensuing reorganization;
- d. Becoming the full risk insurer for any contractor or subcontractor not having purchased a worker's compensation policy during the time the contractor or subcontractor is under contract on the wrap-up project, except as to an employer granted self-insurance; and
- e. Becoming the full risk insurer for any contractor or subcontractor not insured or self-insured while working on the wrap-up project.

3. The designated wrap-up carrier shall submit a certified copy of a statement from an officer authorizing and directing the execution of the application and agreement.

(e) Minimum requirements for contractors and subcontractors. The minimum requirements for contractors and subcontractors are as provided in subs. (1) and (2).

(f) Reimbursement for expenses incurred by department. The department shall be reimbursed for those expenses incurred because of the designated carrier wrap-up program. Where the department specifically consents to divided-insurance or partial-insurance on a wrap-up project, the owner shall reimburse the department, within 30 days after the date of a written request by the department, a sum determined by the department not to exceed 2% of the total audited worker's compensation premium charged, with payment not to exceed 1% of the estimated worker's compensation premium upon initial request. If an additional levy is determined to be necessary, a request shall be made for a sum that results in a total charge not to exceed 2% of the total audited worker's compensation premium charged.

(g) Inapplicability to other employers. Subsection (3), does not apply to any group of employers other than those specified in this section on any other type of operations nor to any single contract or policy of insurance for any group or association of employers.

Section 35. Ind 80.65 is created to read:

Ind 80.65 NOTICE OF CANCELLATION OR TERMINATION. Notice of cancellation or termination of a policy under s. 102.31(1)(a), Stats., shall be given by certified mail or personal service to the Wisconsin compensation rating bureau, as defined in s. 626.02(2), Stats., rather than to the department. Whenever the Wisconsin compensation rating bureau receives notice of cancellation or termination pursuant to this section, it shall immediately notify the department of cancellation or termination.

Section 36. Ind 80.70 is created to read:

Ind 80.70 MALICE OR BAD FAITH. (1) An employer who unreasonably refuses or unreasonably fails to report an alleged injury to its insurance company providing worker's compensation coverage, shall be deemed to have acted with malice or bad faith.

(2) An insurance company or self-insured employer who, without credible evidence which demonstrates that the claim for the payments is fairly debatable, unreasonably fails to make payment of compensation or reasonable and necessary medical expenses, or after having commenced those payments, unreasonably suspends or terminates them, shall be deemed to have acted with malice or in bad faith.

Section 37. EFFECTIVE DATE. These rules shall take effect on the first day of the month following publication of the final order of adoption in the Wisconsin administrative register, pursuant to s. 227.026(1)(intro.), Stats.

WC250:02