



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0293/1
GMM:kjf

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 456**

February 2, 2016 - Offered by Senator STROEBEL.

1 **AN ACT to create** 102.03 (6), 102.127, 102.44 (4m) and 102.44 (5m) of the statutes;
2 **relating to:** various changes to the worker's compensation law and granting
3 rule-making authority.

Analysis by the Legislative Reference Bureau

Introduction

This substitute amendment makes various changes to the worker's compensation law, as administered by the Department of Workforce Development and the Division of Hearings and Appeals in the Department of Administration.

Employee misrepresentation of physical condition

Under current law, an employee who is injured while performing services growing out of and incidental to his or her employment may recover worker's compensation for the injury.

This substitute amendment bars recovery of worker's compensation by an injured employee if 1) the employee knowingly and willfully made a false representation as to his or her physical condition in an employment application; 2) the employer relied on the false representation and that reliance was a substantial factor in the employer's decision to hire the employee; and 3) there was a causal connection between the false representation and the injury.

Worker's compensation denied by another state

Under current law, an employee who, while working outside the territorial limits of this state, suffers an injury on account of which the employee would have been entitled to worker's compensation under the laws of this state had the injury occurred in this state is entitled to worker's compensation under the laws of this state if 1) the employee's employment is principally localized in this state; 2) the employee is working under a contract of hire made in this state in employment that is not principally localized in any state; 3) the employee is working under a contract made in this state in employment principally localized in another state whose worker's compensation law is not applicable to the employee's employer; 4) the employee is working under a contract of hire made in this state in employment outside the United States; or 5) the employee is a Wisconsin law enforcement officer acting under a mutual aid agreement with a law enforcement agency of an adjacent state.

This substitute amendment provides that if an employee who suffers an injury outside the territorial limits of this state files a claim for compensation under the laws of another jurisdiction and that claim is denied on the merits by a final decision of that jurisdiction, the employee may not make a claim for compensation under the laws of this state for the same injury.

Worker's compensation payable under laws of other states

The substitute amendment permits an employer or insurer to reduce the amount of benefits payable to an injured employee under the worker's compensation law of this state by the amount of benefits paid or payable to the injured employee under the worker's compensation law of any other state for the same injury. That reduction is allowed only as to payments made under the worker's compensation law of another state made after the effective date of the substitute amendment, that reduction may not take into account payments made under the worker's compensation law of another state to dependents of the employee, and that reduction may not be made on temporary disability benefits payable during a period in which the employee is receiving vocational rehabilitation services.

Minimum permanent partial disability ratings; no actual impairment

Under current law, DWD has promulgated rules establishing minimum permanent partial disability ratings for certain amputation levels, losses of motion, sensory losses, or surgical procedures resulting from injuries for which permanent partial disability is claimed.

This substitute amendment requires those rules to provide that those minimum ratings for a surgical procedure do not apply if it is shown that after the procedure the injured employee suffers from no actual impairment as a result of his or her injury.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 102.03 (6) of the statutes is created to read:

1 102.03 (6) If an employee who suffers an injury outside the territorial limits
2 of this state files a claim for compensation under the laws of another jurisdiction and
3 that claim is denied on the merits by a final decision of that jurisdiction, the employee
4 may not make a claim for compensation under the laws of this state for the same
5 injury.

6 **SECTION 2.** 102.127 of the statutes is created to read:

7 **102.127 False representations on employment applications.** A false
8 representation as to an employee's physical condition made by the employee in an
9 employment application bars the recovery of all compensation payable under this
10 chapter for an injury to the employee if all of the following apply:

11 (1) The employee knowingly and willfully made the false representation.

12 (2) The employer relied on the false representation and that reliance was a
13 substantial factor in the employer's decision to hire the employee.

14 (3) There was a causal connection between the false representation and the
15 injury.

16 **SECTION 3.** 102.44 (4m) of the statutes is created to read:

17 102.44 (4m) The department shall promulgate rules establishing minimum
18 permanent disability ratings for amputation levels, losses of motion, sensory losses,
19 and surgical procedures resulting from injuries for which permanent partial
20 disability is claimed under sub. (3) or (4). Those rules shall provide that those
21 minimum ratings for a surgical procedure performed on an injured employee do not
22 apply if it is shown that after the procedure the injured employee suffers from no
23 actual impairment as a result of the employee's injury.

24 **SECTION 4.** 102.44 (5m) of the statutes is created to read:

1 102.44 **(5m)** (a) Subject to pars. (b) to (f), an employer or insurer may reduce
2 the amount of benefits payable under this chapter to an injured employee, including
3 benefits paid in a lump sum under a compromise settlement under s. 102.16 (1), by
4 the amount of benefits paid or payable to the injured employee under the worker's
5 compensation law of any other state for the same injury, including benefits paid in
6 a lump sum under a compromise settlement under the worker's compensation law
7 of that state.

8 (b) Within 30 days after an injured employee to whom benefits have been paid
9 or are payable under the worker's compensation law of any other state first files a
10 claim for benefits payable under this chapter for the same injury, the injured
11 employee shall report to the employer or insurer the benefits paid or payable to the
12 injured employee under the worker's compensation law of that state. If for reasons
13 other than excusable neglect an employee fails to report under this paragraph within
14 30 days after the date of the claim, the employer or insurer may reduce the
15 employee's weekly compensation benefits under this chapter by 75 percent until such
16 time as the employee reports that information. On receipt of that information, the
17 employer or insurer shall reimburse the employee for all compensation benefits
18 otherwise payable during the period of the reduction.

19 (c) An employer or insurer that reduces the amount of benefits payable under
20 this chapter as permitted under par. (a) shall report that reduction to the department
21 and, on request of the department, shall furnish proof of the basis for that reduction
22 that is satisfactory to the department.

23 (d) An employer or insurer may reduce the amount of benefits payable under
24 this chapter as permitted under par. (a) only as to payments under the worker's
25 compensation law of another state made or payable on or after the effective date of

1 this paragraph [LRB inserts date], and shall compute that reduction on the basis
2 of payments made or payable for temporary total, temporary partial, permanent
3 total, and permanent partial disability.

4 (e) An employer or insurer may not reduce the amount of benefits payable
5 under this chapter as otherwise permitted under par. (a) on account of payments
6 made under the worker's compensation law of another state to a dependent of the
7 employee.

8 (f) An employer or insurer may not reduce the amount of temporary disability
9 benefits payable under this chapter by the amount of temporary disability benefits
10 payable under the worker's compensation laws of another state during a period in
11 which an injured employee is receiving vocational rehabilitation services under s.
12 102.61 (1) or (1m).

13 (END)