

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.