

Highlights of the 2025 Edition

New developments and decisions covered in the 2025 edition of *Wisconsin Workers' Compensation Law* include:

- Wisconsin legislature passed a bill, submitted from the Workers' Compensation Advisory Council, that made changes to the Worker's Compensation Act (2023 Wis. Act 213, effective March 24, 2024):
 - Raising the maximum PPD rate to \$438/week for injuries on/after March 24, 2024, and to \$446/week for injuries on/after January 1, 2025.
 - Allowing insurance carriers to voluntarily make lump sum payments of conceded and unaccrued PPD to injured workers without any interest credit.
 - Dictating that the Division of Hearings and Appeals is required to return case files to the Department of Workforce Development within 30 days after the Division issues an Order and there is no appeal.
- Centers for Medicare & Medicaid Services (CMS), as of April 4, 2025, will require additional, specific information details about a Worker's Compensation Medicare Set Aside account for Medicare beneficiaries. (Chapter 28:10).
- Court of Appeals, in an unpublished decision, found that the exclusive remedy, in a temporary help employment setting under Section 102.29(6)(b), bars negligence tort suit by spouse of deceased temporary help employee against placed employer. (Chapter 13:4).
- Court of Appeals, in an unpublished decision, held that worker's compensation attorney, with a limited scope representation agreement, had no duty to advise injured worker about potential third-party claims or their applicable statute of limitations. (Chapter 29:1).
- Court of Appeals, in an unpublished decision, held that an injured worker was a loaned employee, barring a tort suit against the borrowing employer under Section 102.29(7), when there was an agreement between the general employer and borrowing employer to provide labor and services, the borrowing employer supervised and controlled the details of the work, and the employee was engaged in the contracted work at the time of the injury. (Chapter 7:21).
- Labor and Industry Review Commission, in two cases upholding permanent total disability findings, ruled that the defense vocational expert's inability to show actual jobs that were available for injured worker did not rebut prima facie odd lot cases. (Chapter 17:8).
- Labor and Industry Review Commission ordered respondent carrier responsible for injured worker's smoking cessa-

tion program, if needed, prior to undergoing prospective spine surgery. (Chapter 20:2).

- Labor and Industry Review Commission could not approve compromise agreement that did not have all necessary signatures following verbal agreement, as injured worker died before signing the proposed compromise agreement. (Chapter 28:3).

- Labor and Industry Review Commission awarded 10% PPD for medial and lateral meniscectomies in a post-injury knee surgery and did not reduce the PPD based on the injured worker's three pre-injury knee surgeries—opining that to do so would result in a negative PPD. (Chapter 16:11).

- Labor and Industry Review Commission found that the credibility of non-English-speaking injured worker was not undercut by medical record inconsistencies when the treatment was provided through an interpreter, creating understandable opportunity for errors in recording detail. (Chapter 26:39).

- Labor and Industry Review Commission reiterated an inability to award temporary total disability/lost time benefits when injured worker, despite testimony about ongoing pain and symptoms, failed to provide medical evidence of physical restrictions/limitations. (Chapter 15:8).

- Labor and Industry Review Commission found Section 102.29 applied to an out-of-state third-party tort settlement arising from the same accident, requiring proof of the out-of-state court order to determine if a “cushion” existed against any Wisconsin worker's compensation claim. (Chapter 13:11).

- Labor and Industry Review Commission found a compensable consequence for worker with an initial knee injury who subsequently re-injured the knee five years later while hiking on uneven surfaces during a vacation. (Chapter 12:8).

- Labor and Industry Review Commission found employer liable for bad faith penalty when supervisor of injured worker repeatedly refused to report work injury. (Chapter 25:19).