

Highlights of the 2026 Edition

New developments and decisions covered in the 2026 edition of *Wisconsin Workers' Compensation Law* include:

- **Agency Reunification:** After approximately a ten-year period of separation, the legislature reunited the Wisconsin state agencies involved in the adjudication and administration of the Worker's Compensation Act. From January 11, 2016, through January 1, 2026, the state's Department of Administration, Division of Hearings & Appeals, Office of Worker's Compensation Hearings—OWCH (statutorily known as the "Division") handled the adjudication of litigated worker's compensation claims, while the Department of Workforce Development (DWD, statutorily known as the "Department") was responsible for administrative functions and non-litigated claims. Effective January 1, 2026 (pursuant to 2025 Wis. Act 33), all adjudicatory functions related to disputed worker's compensation claims were transferred back to the DWD, recreating a single unitary agency. All statutory references to the Division in Chapter 102 were removed.
- **Hospital Fee Schedule:** In 2025, the legislature established a future hospital fee schedule for medical treatment expenses (Wis. Stat. § 102.423, as created by 2025 Wis. Act 15). While many details remain in flux, the statute indicates the hospital fee schedule needs to be created and published by the DWD by July 1, 2027, and the fee schedule applies to fees billed through hospitals for items or services also eligible for Medicaid reimbursement. (Chapter 20:26)
- **Escalation of PTD rates:** The legislature amended the Worker's Compensation Act to create annual Permanent Total Disability benefit rate increases for injuries after January 1, 2026. Under Wis. Stat. § 102.44(2)(a)2., the PTD rate increases on the sixth annual anniversary of the employee's injury date, along with annual increases every year thereafter (with the annual escalations based on the proportion of the worker's earnings in relation to the PTD rate on the date of injury). (Chapter 17:10)
- **Court of Appeals, in an unpublished decision, upheld a permanent total disability finding, not based on the odd lot doctrine, but based on the treating physician's opinion that the worker remain off work permanently.** (Chapter 17:3)
- **Labor and Industry Review Commission indicated that, in determining if a worker had a pre-injury disability as required for an apportionment finding under Wis. Stat. § 102.175(3), a "disability" requires evidence that the worker was unable to perform work and had lost wages pre-injury.** (Chapter 16:11)

- In a case involving pre-injury PPD reductions, Labor and Industry Review Commission endorsed a PPD calculation methodology that reduced the starting weekly value of the injured joint by the pre-injury rated disability weeks before applying the PPD percentage to the injury joint, as opposed to a one-to-one PPD percentage reduction that had been utilized previously. (Chapter 16:11)
- Labor and Industry Review Commission affirmed knee PPD rating of 15%, which was higher than Code minimum of 5% for a meniscus repair, due to evidence of additional disabling elements such as continued knee pain, swelling, and clicking; inability to do volunteer firefighter job; and inability to perform pre-injury recreational activities like kayaking and gardening. (Chapter 16:10)
- In two cases, Labor and Industry Review Commission, based on specific fact situations, found law enforcement officers met the “extraordinary stress” standard for compensability in mental-mental injury claims. (Chapter 10:6)
- Labor and Industry Review Commission found a date of disability in an occupational exposure back injury claim as the date of a worker’s spine surgery, despite previous missed work days, reasoning that the surgery date was the day the injury ripened into a disabling affliction. (Chapter 9:3)
- Labor and Industry Review Commission dismissed worker’s claim for alleged defamation against employer (where previous circuit court tort suit had been barred under exclusive remedy provisions) since worker did not have evidence of a mental or physical injury as required for a remedy under the Worker’s Compensation Act. (Chapter 13:3)