

WISCONSIN



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# Spring 2023 Legal Update

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# Administrative Rules Now in Progress

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- Emergency Rule (EmR) 2212 with amendments to ss. DWD 80.02 & 80.51 (4) relating to the wage calculation for part-time employees went into effect October 15, 2022.
- EmR 2212 was extended for 60 additional days and will remain in effect to May 12, 2023.
- The Worker's Compensation Division requested a second extension for EmR 2212 to remain in effect until July 11, 2023.



# Administrative Rules Now in Progress (cont.)

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- The permanent rule covering the calculation of wage for part-time employees (CR 22-072) was submitted to the legislature on January 27, 2023 and was published in the Wisconsin Administrative Register on February 6, 2023.
- We anticipate the permanent rule will become effective on July 1, 2023.



# Administrative Rules Now in Progress (cont.)

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The Worker's Compensation Division has three (3) other administrative rules currently in progress, and expects the updates to be completed later this year.

- SS 048-21 covers minimum permanent partial disability (PPD) ratings in s. DWD 80.32.



# Administrative Rules Now in Progress (cont.)

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- SS 049-21 covers minor and technical changes in ss. DWD 80.60 and 80.61 related to self-insurance and in s. DWD 80.72 to update the formula amount for reasonableness of fee health cost disputes to be 1.2 standard deviations from the mean fee.
- SS 050-21 covers updating the WC treatment guidelines in ch. DWD 81 of the Wis. Admin. Code. The Health Care Provider Advisory Committee continues work to update the WC treatment guidelines.



# Administrative Rules Now in Progress (cont.)

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- The next step of the rule making process is for the Worker's Compensation Advisory Council (WCAC) to approve the changes recommended by a committee of practitioners.
- WCAC is now considering the amendments to s. DWD 80.32 that were proposed at the April 11, 2023 meeting.



# Direction of Care

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§102.42(2) CHOICE OF PRACTITIONER IS specific and straightforward:

- The injured worker has the right to choose their treating provider.
- A referral from the treating provider counts the same as the first choice of doctor.
- Directing an employee to a specific practitioner may count as an examination directed by an employer or WC insurer under s. 102.13 (1), Wis. Stats.



## Direction of Care (cont.)

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- An injured employee has the right to select treatment from any physician, chiropractor, psychologist, dentist, physician assistant, advance practice nurse prescriber, or podiatrist who is licensed in and practicing in Wisconsin.
- In case of an emergency, an employer has the right to select an employee's treating practitioner. After the emergency has passed, the employee may choose the treating practitioner at the earliest opportunity.





# Independent Contractors

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- The distinction between employees and independent contractors is very important, especially with the growth of companies like DoorDash, Uber, Lyft, and InstaCart.
- Section 102.07(8) of the Act sets out the nine-point test to distinguish if an individual is an employee – covered by the WC Act – or an independent contractor.
- To be considered an independent contractor, and therefore not covered by the WC Act, all nine points must be met.



# Independent Contractors (cont.)

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Independent contractors must:

1. Maintain a separate business, **and**;
2. Either have a FEIN\* from the IRS or have filed federal business or self-employment tax returns for work in the previous year, **and**;
3. Operate under specific contracts, **and**;
4. Be responsible for operating expenses under those contracts, **and**;

\* This must be a FEIN, not a Social Security Number.



# Independent Contractors (cont.)

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5. Be responsible for satisfactory performance of the work under the contracts, **and**;
6. Be paid per contract, per job, by commission, or by competitive bid, **and**;
7. Be subject to profit or loss in performing the work under the contract, **and**;
8. Have recurring business liabilities and obligations, **and**;
9. Be in a position to succeed or fail if business expense exceeds income.



# Other Topics



Questions?



# Important Contact Information

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