

2022 WORKERS COMPENSATION UPDATE

Wisconsin Safety Council
Annual Safety Conference
April 11-13, 2022

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Legislative Changes

- Legislative Landscape
- "Agreed-Upon" Bill
- Employee Leasing Companies
- PTSD Claims by Law Enforcement Officers & Firefighters
- Employee Safety Violations
- Delivery Network Couriers & Drivers
- Covid Vaccine



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Legislative Landscape

- Wisconsin Worker's Compensation Advisory Council (WCAC)
 - Purpose
 - Designed to maintain overall stability of the worker's compensation system without regard to partisan changes in the legislative or executive branches of State government
 - Current Status
 - Labor and Management committed to advancing a bill that could pass the legislature and contain beneficial changes to both parties
 - Legislation outside of WCAC
 - Mostly political statement legislation that is not seriously considered



“Agreed-Upon” Bill

- Increase in Maximum Permanent Partial Disability (PPD) rate
 - Proposed increase to \$415 per week for injuries that occurred after the effective date of legislation but before January 1, 2023.
- Expansion of Part-Time Average Weekly Wage (AWW)
 - Employees who worked less than full time on the date of injury can have their AWW expanded to full-time for TTD/TPD benefit purposes
- Other Provisions
 - Employers covered
 - Long-term care Providers



Employee Leasing Companies

- 2021 Wisconsin Act 29
- Definition
 - Employer who contract with clients to provide non-temporary, ongoing employees pursuant to an employee leasing agreement
- Liability for Work Injuries
 - Client (lessee) can elect to be liable for work injuries but liability defaults to the leasing company
- Immunity
 - Amendment also confers immunity from civil suits to the client



PTSD Claims by Law Enforcement, Firefighters, and Emergency Responders/Practitioners

- New section Wis. Stat. § 102.17.19
 - No more extraordinary stress
 - Who does this apply to?
 - Exclusions
 - Limitations
- 2021 Assembly Bill 683
 - Who does this apply to?



Employee Safety Violations

- Amended Wis. Stat. § 102.58
 - Reduced compensation for employees after certain violations
 - Employer safety rule
 - Violation of drug or alcohol policy



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Delivery Network Couriers & Drivers

- 2021 Assembly Bill 487
 - Applies to transportation and Delivery Network Drivers who are not Employees of the companies for Worker's Compensation, Insurance, and Wage/Employment Law purposes
 - Portable Benefit Account
 - Occupational Accident Insurance

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COVID-19 Vaccines

- 2021 Assembly Bill 681
 - Employment-Related Presumption
 - Rebuttable?



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Case Law Update

- Supreme Court Decisions
- Court of Appeals Decisions
- Labor and Industry Review Commission (LIRC) Decisions



Supreme Court Decision

▪ *Graef v. Continental Indemnity Company*
(948 N.W.2d 493)

- Background
 - The Applicant sustained a compensable work injury in November 2012, which caused physical and psychological injuries.
 - The Applicant attempted suicide and sustained a gunshot wound.
 - Filed civil suit claiming the insurer's negligence caused his suicide attempt.
 - Insurer moved for summary judgement citing the Exclusive Remedy provision
- An insurer can reserve the right to litigation in the proper forum and a dispute of underlying factual allegations, which it is entitled to do, is not grounds for bypassing the exclusive remedy provision.



Court of Appeals Decision

▪ *Anderson v. LIRC* (398 Wis.2d 668)(Ct. App. 2021)

- Background
 - Applicant sustained an injury in October 2014, that resulted in surgery.
 - Due to the staffing issues, the dealership hired a permanent replacement in November 2014.
 - The dealership told the Applicant to return when he felt better and he would be placed in a sales position that was less physically demanding.
 - The Applicant never returned to work and filed an Unreasonable Refusal to Rehire Claim
- If permanent restrictions prevent an Employee from returning to their pre-injury position, the Employee has the burden of providing these restrictions to the Employer and the Employer must have the opportunity to respond/re-hire the employee before an Employee can claim URK.





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Labor and Industry Review Commission (LIRC) Decisions

- Arising Out of Employment
- Course of Employment
- Employment Relationship
- Occupational Exposure
- Safety Violation

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Arising out of Employment

- *Bunkelman v. MacFarland Cascade Holdings, Inc.* (LIRC November 30, 2020)
 - Background
 - Applicant worked alone in a control room treating utility poles
 - Shot himself in the left thigh with a handgun he brought to work
 - Claimed injury was work-related because it occurred at work
 - Secretly bringing a gun to work is not an act arising out of employment with the employer

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Arising out of Employment

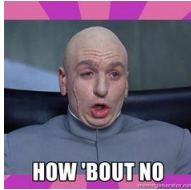
- *Fox v. A. W. Oaks & Son* (LIRC July 13, 2021)
 - Background
 - The Applicant worked as a skid steer operator
 - The Applicant was found lying outside of his truck on the pavement in a McDonald's parking lot after leaving work that day
 - Subsequently passed away and wife brought a death benefits claim
 - When evidence presented clearly points to an unexplained injury, it cannot be found compensable or arising out of employment.

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Arising out of Employment

- *Tiedeman Jr. v. County of Dane* (LIRC February 18, 2021)
 - Background
 - The Applicant sustained a compensable left shoulder injury
 - Reached an end of healing
 - Took a job for a new employer
 - Claimed right shoulder injury when performed work on his personal cabin due to overuse
 - An unreasonable decision under the circumstances can break the chain of causation. Also, the likelihood that the right shoulder injury would have occurred regardless of the left-shoulder injury also speaks against compensability.

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Course of Employment

- *Bentley v. Meridian Industries* (LIRC November 30, 2020)
 - Background
 - While on the Employer's property, the Applicant chose to leave a walkway, step over a curb onto a grassy area that provided a more direct route to the doorway
 - Employer had policy advising against this
 - Subsequently tripped on a tree root and fell
 - Claimed left knee and right thumb injury
 - A policy without consistent enforcement and direct warning as to the dangers of noncompliance is not sufficient to establish an employee was not traveling in a "ordinary and usual way".

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Employment Relationship

- *SK Management v. Donald King, et al* (LIRC June 29, 2020)
 - Background
 - Applicant claimed he was injured while working for SK Management.
 - SK Management claimed the Applicant was not an employee on the date of the alleged injury
 - Instead, said he was independent contractor
 - Nothing has changed when it comes to the test establishing whether an Applicant is an employee or independent contractor.

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Occupational Exposure

- *Clark v. PPG Industries* (LIRC August 7, 2020)
 - Background
 - The Applicant worked for the Employer for 31 years making paint.
 - He was exposed to points, chemicals, and resins.
 - The Applicant was a non-smoker and active.
 - Diagnosed with bladder cancer
 - Claimed cancer and surgery due to occupational exposure
 - Was subjected to regular blood monitoring
 - The results of monitoring do not preclude a finding of a compensable work-related exposure.

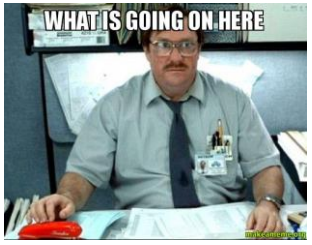
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Safety Violation

- *Natera v. City of Madison* (LIRC January 27, 2022)
 - Background
 - The Applicant sustained a left knee injury when he slipped on ice outside the Employer's building
 - He was walking to his vehicle
 - The area where the sidewalk met the curb had sunk approximately one-inch and water would pool in that area
 - The Applicant alleged entitlement to 15% increase in compensation due to an Employer safety violation.
 - Awareness of a hazard and lack of active steps to alleviate that hazard can result in increased compensation for a safety violation.

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Status of Hearing, Mediations, and Settlement Conferences



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Status of Hearing, Mediations, and Settlement Conferences

- Scrutiny of Compromises
- Pre-Hearings
 - No Longer reserved for pro se Applicants
- Settlement Conferences and Mediations
 - Excellent Resources
- Hearings

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QUESTIONS?

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