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

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

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

COVID-19 Vaccines

- 2021 Assembly Bill 681
  - Employment-Related Presumption
  - Rebuttable?
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 suit not claiming the insurer’s negligence caused his suicide attempt.
  - Insurer moved for summary judgment 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. The Employer then has the opportunity to respond to the Employee before an Employee can claim URR.
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.
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.

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.
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 an "ordinary and usual way."

Employment Relationship

  - 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.
    - Indeed, said he was independent contractor.
  - Nothing has changed when it comes to the test establishing whether an Applicant is an employee or independent contractor.
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 paints, 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.

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.
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

QUESTIONS?

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