

How do worker's compensation claims work in Wisconsin?

- 1. Employee files a claim by reporting injury to employer. Employer must report injury to its insurer when (1) disability persists for more than three days or (2) the employee has sought treatment outside of work and the insurer has primary liability or ungait treatment expenses.
- 2. Insurer or self-insured employer either pays claim or, if it is fairly debatable, disputes liability (e.g., there are conflicting medical opinions or histories). Employee can contest a denial of liability by filing a hearing application.
- 3. After a hearing application is filed, the Division of Hearings and Appeals will schedule a hearing before an Administrative Lavdge. The parties can attempt to settle before the hearing. If no settlement is reached, the ALJ will conduct a hearing and issue a decision resolving the dispute.
- 4. Either party can appeal the ALJ decision to the Labor and Industry Review Commission. LIRC's findings of fact are final when supported by credible and substantial evidence. LIRC's legal conclusions are subject to judicial review.
- 5. Possible further appeal to Circuit Court, Wisconsin Court of Appeals, and then the Wisconsin Supreme Court.



What is LIRC?

LIRC is a state administrative entity charged with reviewing worker's compensation, unemployment, and equal rights cases. In worker's compensation cases, LIRC reviews decisions by Administrative Law Judges. LIRC does not defer to the ALJ's findings or conclusions. Instead, LIRC makes its own decisions independently based on a review of the record developed before the ALJ and written briefs. There is generally no opportunity to submit additional evidence to LIRC.

LIRC is independent from employees and employers and attempts to provide a fair and impartial review of alleged worker's compensation injuries. Their goal is to allow all parties to be afforded a full and fair opportunity to be heard and have their proceedings carried out with proper application of law as enacted by the Wisconsin Legislature.

Who sits on LIRC?

- LIRC is comprised of three commissioners who are appointed on rotating terms by the Governor. Terms last six years, and are on a two-year rotating basis.
- Commissioner Georgia Maxwell Background in public and private sector experience reviewing employment law decisions. Commissioner Maxwell previously worked at the DWD while serving as the Deputy Secretary.
 2023
- Chairperson Michael Gillick Background representing injured workers in worker's compensation cases. Holds a JD from Marquette University Law School.
 2025
- Commissioner Marilyn Townsend- Professional background in public government. Holds a JD from the Potomac School of Law in Washington, D.C. In private practice, she represented employees with job related issues.
 2027

2021 Wisconsin Act 232 Effective April 10, 2022 New PPD Rates New wage calculation for part-time workers WD authority to conduct mediations and settlement conferences with unrepresented employees Various other changes

New PPD Rates

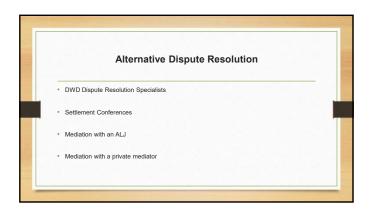
- · PPD rates are adjusted periodically by statute
- For injuries occurring January 1, 2017, through April 9, 2022
 - \$362 per week, \$1,568.67 per month
- For injuries occurring April 10, 2022, through December 31, 2022
 - \$415 per week, \$1,798.33 per month
- For injuries on or after January 1, 2023
 - \$430 per week, \$1,863.32 per month

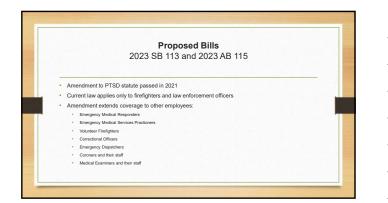
Wage Calculation for Part-Time Workers (regularly scheduled less than 35 hours/week)

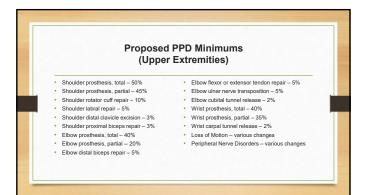
Old Method

- Hourly Wage x Hours in Normal Full-time Workweek (presumed to equal 40 hours)
- · Part-time workers usually had wage "expanded" to full-time, unless "part of a class."
- New Method higher of:
 - · Hourly Wage x Average Hours worked per week in year before injury or
 - Gross Earnings / Weeks Worked in year before injury

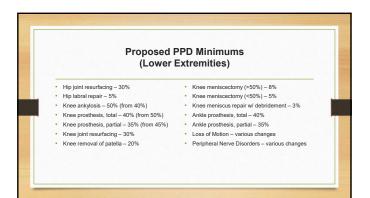
Caveats (the fine print) A synchronia should show weekly hours worked and gross earnings A When counting weeks, do no count weeks when no work was performed. Do count weeks when employee worked any part of the week. B was method does not apply when: M was method does not apply when: B mployee worked part-time for less than a year before injury. B mployee ran rebut expansion by showing employee chose to restrict availability to part-time

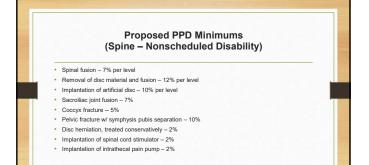


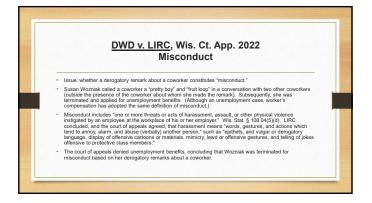




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Rood v. Selective Ins. et al., Wis. Ct. App. 2022 **Exclusive Remedy**

- · Issue: whether a telescopic forklift is a "motor vehicle"
- Charles Rood sustained injury when a coworker drove a telescopic forklift (also known as a lull or telehandler) over his left foot and leg. The employer did not own or lease the forklift. Rood collected worker's compensation and then sued the coworker for negligence. The coworker (and his insurer) denied liability based on the "exclusive remedy" provision of the Worker's Compensation Act.
- Generally, worker's compensation is an employee's exclusive remedy against his employer, covorkers, and the WC insurer. However, an employee can sue a coworker when (as relevant here) the claim involves "negligent operation of a motor vehicle not owned or leased by the employer." Wis Stat. § 102.03(2). Rood argued his claim can proceed because the liability policy grants coverage and because the telescopic forklift is a "motor vehicle" not owned or leased by the semployer. The court of apeals rejected both arguments. Rood's tort claim is barred, the court concluded, because the telescopic forklift is not a motor vehicle.





SK Management v. LIRC, Wis. Ct. App. 2022 **Covered Employment**

- Issue: whether a paid helper was an employee of a property management company that did not directly hire him.
- Donald King fell off a ladder and injured his right arm while working on a demolition project at a property managed by SK Management. SK had hired Srian Schweinert (db/ab Mr. Phixitali) to do work such as demolition and maintenance at various properties. With SK's permission, Schweinert had brought on helpers, including King, to help with these projects.
- The SK manager usually relayed what jobs needed to be done through Schweinert and occasionally
 directed workers himself. Schweinert brough some tools to jobsites but SK supplied most equipment
- SK paid Schweinert and all workers procured by Schweinert on an hourly basis. SK issued one check to Schweinert, who then distributed the pay appropriately to the other workers.
- · If the SK manager was unhappy with a worker, he would direct Schweinert not to bring him back.

SK Management cont'd - Employment

- King claimed he (and Schweinert) were employees of SK Management. If Schweinert was an independent contractor, he could have been King's employer. However, a worker is not an independent contractor unless nine conditions are met:
 - Maintains a separate business with its own office, equipment, materials, facilities

 - Mantans a separate business with is own office, equipment, maternals, Budites
 Holds or has applied for a feeding employed identification number
 Operates under contracts to perform specific services or work and controls the means of performing the service
 Incurs the main expenses related to the service or work
 Is responsible for the satisfactory completion of the service or work
 Reserves compensation for the service or work on a commission, job, or competitive bid basis
 May realize a profile or how services to work on a commission, job, or competitive bid basis
 May realize a profile or how services

 - Has continuing or recurring business liabilitites
 The success of failure of the independent contractor depends on its business receipts and expenditures

SK Management cont'd - Employment · Schweinert met only two of the nine independent-contractor conditions. He possessed tools and equipment for his handyman business and had a federal employer identification number (conditions 1 and 2). However, he was not at risk of suffering a loss and had no recurrent business obligations. SK maintained ultimate control over how work was to be done; paid wages on an hourly basis to Schweinert (who then distributed the pay to his helpers), and had primary responsibility for the satisfactory completion of the work. Accordingly, Schweinert was an employee, not an independent contractor, of SK Management. As an employee, he was not an employer of King or anyone else. (Wisconsin Statutes generally prohibit someone from being both an employee and an employer at the same time.) .

SK Management cont'd – Employment

- Wast King an employee of SK Management? An employee is anyone "in the service of another under any contract of hire, express or implied, [and] all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constru of the employee". Wis Stat. § 102.07.01.
- of the employet. "We Stat, § 102.07(4)."
 The "principal less" is whether the alleged employer has the right to control the details of the work. Secondary factors
 include (1) the exercise of that right to control the details (2) the method of payment of compensation, (3) the furnishing of
 equipment of tools for the performance of the work, and (4) the right to first of terminate the relationship."
 King was an employee of SK Management.
 SK advices Schweierts the the King and that actual notice of King's work on the details (2) there with the state of the second schweiert to the King and that actual notice of King's work on the details down on the details (2) the right to control the details of King's work and had final say over whether it was satisfactory
 SK controlled how much King was paid and indirectly paid his wages.
 SK had the right to terminate King and the details of King.
 SK had the right to terminate King and the details of King.
 SK had the right to terminate King and the other helpers.

