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176.061. Third-party liability

Minnesota Statutes Annotated Labor, Industry (Ch. 175-189) (Approx. 4 pages)

Labor, Industry (Ch. 175-189)
 Chapter 176. **Workers' Compensation**
 General Application and Liability

M.S.A. § 176.061

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Currentness

Subdivision 1. Election of remedies. If an injury or death for which benefits are payable occurs under circumstances which create a legal liability for damages on the part of a party other than the employer and at the time of the injury or death that party was insured or self-insured in accordance with this chapter, the employee, in case of injury, or the employee's dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for benefits, but not against both.

Subd. 2. Action for recovery of damages. If the employee, in case of injury, or the employee's dependents, in case of death, brings an action for the recovery of damages, the amount of the damages, the manner in which they are paid, and the persons to whom they are payable, are as provided in this chapter. In no case shall the party be liable to any person other than the employee or the employee's dependents for any damages resulting from the injury or death.

Subd. 3. Election to receive benefits from employer; subrogation. If the employee or the employee's dependents elect to receive benefits from the employer, or the special compensation fund, the employer or the special compensation fund has a right of indemnity or is subrogated to the right of the employee or the employee's dependents to recover damages against the other party. The employer, or the attorney general on behalf of the special compensation fund, may bring legal proceedings against the party and recover the aggregate amount of benefits payable to or on behalf of the employee or the employee's dependents, regardless of whether such benefits are recoverable by the employee or the employee's dependents at common law or by statute together with costs, disbursements, and reasonable attorney fees of the action.

If an action as provided in this chapter is prosecuted by the employee, the employer, or the attorney general on behalf of the special compensation fund, against the third person, and results in judgment against the third person, or settlement by the third person, the employer has no liability to reimburse or hold the third person harmless on the judgment or settlement in absence of a written agreement to do so executed prior to the injury.

Subd. 4. Application of subdivisions 1, 2, and 3. The provisions of subdivisions 1, 2, and 3 apply only if the employer liable for benefits and the other party legally liable for damages are insured or self-insured and engaged, in the due course of business in, (1) furtherance of a common enterprise, or (2) in the accomplishment of the same or related purposes in operations on the premises where the injury was received at the time of the injury.

Subd. 5. Cumulative remedies. (a) If an injury or death for which benefits are payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4 do not apply, or the party other than the employer is not then insured or self-insured as provided by this chapter, legal proceedings may be taken by the employee or the employee's dependents in accordance with paragraph (b), or by the employer, or by the attorney general on behalf of the special compensation fund, in accordance with paragraph (c), against the other party to recover damages, notwithstanding the payment of benefits by the employer or the special

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compensation fund or their liability to pay benefits.

(b) If an action against the other party is brought by the injured employee or the employee's dependents and a judgment is obtained and paid or settlement is made with the other party, the employer or the special compensation fund may deduct from the benefits payable the amount actually received by the employee or dependents or paid on their behalf in accordance with subdivision 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer or the special compensation fund, upon application the court may grant the employer or the special compensation fund the right to intervene in the action for the prosecution of the action. If the injured employee or the employee's dependents or any party on their behalf receives benefits from the employer or the special compensation fund or institutes proceedings to recover benefits or accepts from the employer or the special compensation fund any payment on account of the benefits, the employer or the special compensation fund is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity against a third party regardless of whether such benefits are recoverable by the employee or the employee's dependents at common law or by statute. The employer or the attorney general on behalf of the special compensation fund may maintain a separate action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the employee's dependents, or in the name of the employer, or in the name of the attorney general on behalf of the special compensation fund, against the other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the attorney general on behalf of the special compensation fund, or if the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or the employee's dependents the right to intervene in the action for the prosecution of the action. The proceeds of the action or settlement of the action shall be paid in accordance with subdivision 6.

(c) If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of an employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other remedies provided, may maintain an action against the other party for recovery of the premiums. This cause of action may be brought either by joining in an action described in paragraph (b) or by a separate action. Damages recovered under this clause are for the benefit of the employer and the provisions of subdivision 6 are not applicable to the damages.

(d) The third party is not liable to any person other than the employee or the employee's dependents, or the employer, or the special compensation fund, for any damages resulting from the injury or death.

(e) A coemployee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the coemployee or was intentionally inflicted by the coemployee.

Subd. 6. Costs, attorney fees, expenses. (a) The proceeds of all actions for damages or of a settlement of an action under this section, except for damages received under subdivision 5, paragraph (c), received by the injured employee or the employee's dependents or by the employer or the special compensation fund, as provided by subdivision 5, shall be divided as follows:

(1) after deducting the reasonable cost of collection, including but not limited to attorney fees and burial expense in excess of the statutory liability, then

(2) one-third of the remainder shall in any event be paid to the injured employee or the employee's dependents, without being subject to any right of subrogation.

(b) Out of the balance remaining, the employer or the special compensation fund shall be reimbursed in an amount equal to all benefits paid under this chapter to or on behalf of the employee or the employee's dependents by the employer or special compensation fund, less the product of the costs deducted under paragraph (a), clause (1), divided by the total proceeds received by the employee or dependents from the other party multiplied by all benefits paid by the employer or the special compensation fund to the employee or the employee's dependents.

(c) Any balance remaining shall be paid to the employee or the employee's dependents, and

shall be a credit to the employer or the special compensation fund for any benefits which the employer or the special compensation fund is obligated to pay, but has not paid, and for any benefits that the employer or the special compensation fund is obligated to make in the future.

(d) There shall be no reimbursement or credit to the employer or to the special compensation fund for interest or penalties.

Subd. 7. Medical treatment. The liability of an employer or the special compensation fund for medical treatment or payment of any other compensation under this chapter is not affected by the fact that the employee was injured through the fault or negligence of a third party, against whom the employee may have a cause of action which may be sued under this chapter, but the employer, or the attorney general on behalf of the special compensation fund, has a separate additional cause of action against the third party to recover any amounts paid for medical treatment or for other compensation payable under this section resulting from the negligence of the third party regardless of whether such other compensation is recoverable by the employee or the employee's dependents at common law or by statute. This separate cause of action of the employer or the attorney general on behalf of the special compensation fund may be asserted in a separate action brought by the employer or the attorney general on behalf of the special compensation fund against the third party, or in the action commenced by the employee or the employer or the attorney general on behalf of the special compensation fund under this chapter, but in the latter case the cause of action shall be separately stated, the amount awarded in the action shall be separately set out in the verdict, and the amount recovered by suit or otherwise as reimbursement for medical expenses or other compensation shall be for the benefit of the employer or the special compensation fund to the extent that the employer or the special compensation fund has paid or will be required to pay compensation or pay for medical treatment of the injured employee and does not affect the amount of periodic compensation to be paid.

Subd. 8. Deleted by amendment, Laws 1983, c. 290, § 35, eff. July 1, 1983.

Subd. 8a. Notice to employer. In every case arising under subdivision 5, a settlement between the third party and the employee is not valid unless prior notice of the intention to settle is given to the employer within a reasonable time. If the employer or insurer pays compensation to the employee under the provisions of this chapter and becomes subrogated to the right of the employee or the employee's dependents or has a right of indemnity, any settlement between the employee or the employee's dependents and the third party is void as against the employer's right of subrogation or indemnity. When an action at law is instituted by an employee or the employee's dependents against a third party for recovery of damages, a copy of the complaint and notice of trial or note of issue in the action shall be served on the employer or insurer. Any judgment rendered in the action is subject to a lien of the employer for the amount to which it is entitled to be subrogated or indemnified under the provisions of subdivision 5.

Subd. 9. Service of notice on attorney general. In every case in which the state is liable to pay compensation or is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity, all notices required to be given the state shall be served on the attorney general and the commissioner.

Subd. 10. Indemnity. Notwithstanding the provisions of chapter 65B or any other law to the contrary, an employer has a right of indemnity for any compensation paid or payable pursuant to this chapter, regardless of whether such compensation is recoverable by the employee or the employee's dependents at common law or by statute, including temporary total compensation, temporary partial compensation, permanent partial compensation, medical compensation, rehabilitation, death, and permanent total compensation.

Subd. 11. Right of contribution. To the extent the employer has fault, separate from the fault of the injured employee to whom workers' compensation benefits are payable, any nonemployer third party who is liable has a right of contribution against the employer in an amount proportional to the employer's percentage of fault but not to exceed the net amount the employer recovered pursuant to subdivision 6, paragraphs (b) and (c). The employer may avoid contribution exposure by affirmatively waiving, before selection of the jury, the right to recover workers' compensation benefits paid and payable, thus removing compensation benefits from the damages payable by any third party.

Procedurally, if the employer waives or settles the right to recover workers' compensation

benefits paid and payable, the employee or the employee's dependents have the option to present all common law or wrongful death damages whether they are recoverable under the Workers' Compensation Act or not. Following the verdict, the trial court will deduct any awarded damages that are duplicative of workers' compensation benefits paid or payable.

Credits

Laws 1953, c. 755, § 6. Amended by Laws 1967, Ex.Sess., c. 1, § 6; Laws 1967, Ex.Sess., c. 40, § 4, eff. Sept. 1, 1967; Laws 1969, c. 199, §§ 1, 2, eff. April 26, 1969; Laws 1969, c. 936, §§ 3, 4, eff. Sept. 1, 1969; Laws 1973, c. 388, § 15; Laws 1976, c. 154, §§ 1, 2, eff. April 4, 1976; Laws 1979, c. 81, §§ 1, 2; Laws 1979, Ex.Sess., c. 3, § 31; Laws 1981, c. 346, §§ 61 to 66, eff. July 1, 1981; Laws 1983, c. 290, § 35, eff. July 1, 1983; Laws 1986, c. 444; Laws 1995, c. 231, art. 1, § 16; Laws 2000, c. 447, §§ 4 to 8.

Editors' Notes

LAW REVIEW AND JOURNAL COMMENTARIES

Accommodating the competing goals in Minnesota's third party workers' compensation claims. Judge Edward W. Bearse and Eric D. Paulsrud, 10 Hamline L.Rev. 1 (1987).

Analysis of recent workers' compensation developments. Kenneth F. Kirwin. 1982, 8 Wm. Mitchell L.Rev. 847.

Narrowing the window: Refining the personal duty requirement for coemployee liability under Minnesota's workers' compensation system--*Stringer v. Minnesota Vikings Football Club, LLC*. David J. Krco, 33 Wm.Mitchell L.Rev. 739 (2007).

Right of employer for reimbursement under doctrine of subrogation more than two years after accident occurred. June 1922, 6 Minn.L.Rev. 593.

Shedding some light on "employee financed intervention and subrogation claims." Wilbur W. Fluegel, 14 Minn.Trial Law. 18 (Winter 1990).

Subrogation, effect of settlement and release without insurer's consent. March 1958, 32 Minn.L.Rev. 678.

Subrogation, statute of limitations. Nov. 1963, 48 Minn.L. Rev. 181.

Subrogation and Indemnity No-Fault Act. 1978, 4 Wm. Mitchell L.Rev. 119.

Subrogation of employer to rights of employee. June 1933, 17 Minn.L.Rev. 829.

Subrogation under compensation laws. Nov. 1958, 43 Minn.L.Rev. 170.

Workers' compensation amendments of the 1979 Minnesota legislature. Jay Y. Benanav. 1980, 6 Wm. Mitchell L.Rev. 743.

Workers' compensation subrogation issues in third-party tort claims: Some considerations and strategies. Scott H. Soderberg, 63 Hennepin Law. 16 (Jan.-Feb. 1994).

Workmen's compensation,

- Physician's malpractice as basis for deduction or subrogation. January 1940, 24 Minn.L.Rev. 301-303.
- Subrogation or indemnity against third-party tortfeasor, limitations, May 1942, 26 Minn.L.Rev. 768-771.

Wrongful death act, subrogation splitting causes of action. April 1940, 24 Minn.L.Rev. 719.

LIBRARY REFERENCES

Workers' Compensation --2158 to 2252.

C.J.S. Workers' Compensation §§ 1663 to 1715.

RESEARCH REFERENCES

ALR Library

125 ALR 5th 1, Conduct or Inaction by Insurer Constituting Waiver Of, or Creating Estoppel to Assert, Right of Subrogation.

7 ALR 5th 969, Right of Workers' Compensation Insurer or Employer Paying to a Workers' Compensation Fund, on the Compensable Death of an Employee With No Dependents, to Indemnity or Subrogation from Proceeds of Wrongful Death Action Brought Against Third-Party Tortfeasor.

Treatises and Practice Aids

22 Minnesota Practice Series § 6:17, Insurer Subrogation.

UNITED STATES SUPREME COURT

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Nebraska / Employers right to
bring claim.**48-118. Third-party claims; subrogation**

West's Revised Statutes of Nebraska Annotated Chapter 48. Labor (Approx. 2 pages)

Part II. Elective Compensation

(b) Rights and Liabilities of Third Persons

Neb.Rev.St. § 48-118

48-118. Third-party claims; subrogation

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Search term

When a third person is liable to the employee or to the dependents for the injury or death of the employee, the employer shall be subrogated to the right of the employee or to the dependents against such third person. The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employee or to the dependents and shall be treated as an advance payment by the employer on account of any future installments of compensation.

Nothing in the Nebraska Workers' Compensation Act shall be construed to deny the right of an injured employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an employer having paid or paying compensation to such employee or his or her dependents shall be made a party to the suit for the purpose of reimbursement, under the right of subrogation, of any compensation paid.

Credits

Laws 1913, ch. 198, § 18, p. 585; Laws 1929, ch. 135, § 1, p. 489; Laws 1963, ch. 283, § 1, p. 844; Laws 1986, LB 811, § 37; Laws 1994, LB 594, § 1; Laws 1997, LB 854, § 1; Laws 2000, LB 1221, § 2; Laws 2005, LB 13, § 2; Laws 2005, LB 238, § 2.

Codifications: R.S. 1913, § 3659; C.S. 1922, § 3041; C.S. 1929, § 48-118; R.S. 1943, § 48-118.

Relevant Notes of Decisions (115)

View all 153

Notes of Decisions listed below contain your search terms.

Construction and operation of statutes

Statutory amendment which changed workers' compensation subrogation interest of employers and insurers, such that they were subrogated for amount judicially determined to be a fair and equitable division of claimant's settlement with third-party tortfeasor, was a substantive change that could not be retroactively applied to claimants whose accident occurred prior to enactment of amendment, and thus employer's dollar-for-dollar subrogation interest under prior statute included both reimbursement for workers' compensation already paid and a credit against any future payments. Neb.Rev.St. § 48-118. *Turney v. Werner Enterprises, Inc.*, 2000, 618 N.W.2d 437, 260 Neb. 440. Workers' Compensation — 58

Amendment to provision of Workers' Compensation Act governing manner of distribution of third-party settlement proceeds between an employee and employer, or between an employee and the employer's insurer, effected a substantive rather than procedural claim and applies prospectively only, and thus did not apply to subrogation claim asserted by workers' compensation insurer which arose from injury occurring prior to amendment's effective date. Neb.Rev.St. § 48-118. *Combined Ins. v. Shurter*, 2000, 607 N.W.2d 492, 258

NOTES OF DECISIONS (153)

Action against third persons for employee's injury or death, generally
Admissibility of evidence
Agreement for benefit of third person
Allowance and payment from funds in court
Amount and items of recovery
Conclusiveness of adjudication
Construction and operation of statutes
Contingent and unmatured claims
Costs
Death of party

Form and allegations in pleadings
Indemnity or contribution
Judicial estoppel
Jurisdiction
Law governing
Notice
Parties
Payment of compensation or agreement therefor
Payments from other sources
Persons liable as third persons
Purpose
Remand
Right to proceeds of action or settlement
Rights as to cause of action based on employee's death
Rights of action against executors or administrators
Settlements
Time to sue, successive actions, and limitations
Waiver

Neb. 958. Workers' Compensation ➤ 58

Amendment to workers' compensation subrogation provisions, giving employer or its insurer right to equitable share of third-party settlement rather than dollar-for-dollar recovery, did not merely change way in which subrogation rights were exercised, it actually changed nature of subrogation interest itself and was, therefore, a substantive change in the law, which applied prospectively only. Neb.Rev.St. § 48-118. *Jackson v. Branick Industries, Inc.*, 1998, 254 Neb. 950, 581 N.W.2d 53. **Workers' Compensation** ➤ 58

Law governing

Employer's subrogated workers' compensation interest in the proceeds from claimants' settlement agreement with third-party tortfeasors was governed by law of Nebraska, rather than by law of state which was identified in settlement agreement and in which accident had occurred, where claimants received benefits under Nebraska workers' compensation statutes and still had a claim for benefits pending before the Nebraska Workers' Compensation Court. Neb.Rev.St. § 48-118. *Turney v. Werner Enterprises, Inc.*, 2000, 618 N.W.2d 437, 260 Neb. 440. **Workers' Compensation** ➤ 74

Equitable subrogation

Where insurer settled compensation claim for \$2,000 upon agreement for subrogation against doctor charged with malpractice resulting in death, and plaintiff settled action against doctor for \$2,500 without prejudice to insurer's rights, doctrine of "equitable subrogation" applied and insurer was entitled to judgment against doctor for \$2,000 irrespective of sufficiency of evidence to warrant submission to jury of alleged malpractice, and fact that insurance carrier proceeded on cross-petition and attempted to establish liability did not constitute "estoppel". Comp.St.1929, § 48-101 et seq., and § 48-118. *Burks v. Packer*, 1943, 143 Neb. 373, 9 N.W.2d 471. **Estoppel** ➤ 3(3); **Workers' Compensation** ➤ 2213

Contingent and unmaturred claims

An injured employee's right of action against deceased fellow-employee for injuries caused by negligence was not a "contingent claim" required by statute to be first made absolute by district court before presentation against estate of fellow-employee in county court. R.S.1943, §§ 30-704 to 30-706, 30-714, 30-801, 48-118. *Rehn v. Bingaman*, 1949, 151 Neb. 196, 36 N.W.2d 856, appeal dismissed 70 S.Ct. 79, 338 U.S. 806, 94 L.Ed. 488, rehearing denied 70 S.Ct. 157, 338 U.S. 882, 94 L.Ed. 541, motion to recall mandate denied 152 Neb. 171, 40 N.W.2d 673. **Executors And Administrators** ➤ 202.2

Rights of action against executors or administrators

An injured employee's cause of action against fellow-employee for injuries, and employer's right to subrogation are "actions for the recovery of money only" which cannot be brought against executor or administrator. R.S.1943, §§ 30-704 to 30-706, 30-714, 30-801, 48-118. *Rehn v. Bingaman*, 1949, 151 Neb. 196, 36 N.W.2d 856, appeal dismissed 70 S.Ct. 79, 338 U.S. 806, 94 L.Ed. 488, rehearing denied 70 S.Ct. 157, 338 U.S. 882, 94 L.Ed. 541, motion to recall mandate denied 152 Neb. 171, 40 N.W.2d 673. **Executors And Administrators** ➤ 429

Conclusiveness of adjudication

Metropolitan utilities district which was sued by corporation for damage arising out of explosion and fire and which sought to avoid liability on theories of collateral estoppel and res judicata because of failure of corporation's employee, which had joined corporation as required by statute, to recover for personal injuries from district as result of the same explosion and fire was deemed to know that corporation did not appear on its own account in employee's action. R.R.S.1943, § 48-118. *American Province of Servants of Mary Real Estate Corp. v. Metropolitan Utilities Dist.*, 1965, 178 Neb. 348, 133 N.W.2d 466. **Judgment** ➤ 696

Judgment against corporation's employee which had sued metropolitan utilities district for injuries received in explosion and fire and which had joined corporation as required by statute for purpose of reimbursement of compensation was not res judicata in corporation's action against the district for property damage caused by the explosion and fire, in view of appearance of corporation in employee's action solely for benefit of the carrier. R.R.S.1943, § 48-118. *American Province of Servants of Mary Real Estate Corp. v. Metropolitan Utilities Dist.*, 1965, 178 Neb. 348, 133 N.W.2d 466. **Judgment** ➤ 696

Oregon - Formula and Consent

West's Oregon Revised Statutes Annotated

Title 51. Labor and Employment; Unlawful Discrimination

Chapter 656. Workers' Compensation (Refs & Annots)

Recovery Against Third Persons and Noncompensating Employers

O R S. § 656.593

Formerly cited as OR ST § 656.322

656.593. Procedure for actions; releases of liability and lien of paying agency

Currentness

(1) If the worker or the beneficiaries of the worker elect to recover damages from the employer or third person, notice of such election shall be given the paying agency by personal service or by registered or certified mail. The paying agency likewise shall be given notice of the name of the court in which such action is brought, and a return showing service of such notice on the paying agency shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. The proceeds of any damages recovered from an employer or third person by the worker or beneficiaries shall be subject to a lien of the paying agency for its share of the proceeds as set forth in this section. When the proceeds are paid in a series of payments, each payment shall be distributed proportionately to each recipient according to the formula provided in this section, unless otherwise agreed by the parties. The total proceeds shall be distributed as follows:

(a) Costs and attorney fees incurred shall be paid, such attorney fees in no event to exceed the advisory schedule of fees established by the Workers' Compensation Board for such actions.

(b) The worker or the beneficiaries of the worker shall receive at least 33-1/3 percent of the balance of such recovery.

(c) The paying agency shall be paid and retain the balance of the recovery, but only to the extent that it is compensated for its expenditures for compensation, first aid or other medical, surgical or hospital service, and for the present value of its reasonably to be expected future expenditures for compensation and other costs of the worker's claim under this chapter. Such other costs include expenditures of the Department of Consumer and Business Services from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve and the Workers' Benefit Fund in reimbursement of the costs of the paying agency. Such other costs also include assessments for the Workers' Benefit Fund, and include any compensation which may become payable under ORS 656.273 or 656.278.

(d) The balance of the recovery shall be paid to the worker or the beneficiaries of the worker forthwith. Any conflict as to the amount of the balance which may be retained by the paying agency shall be resolved by the board.

(2) The amount retained by the worker or the beneficiaries of the worker shall be in addition to the compensation or other benefits to which such worker or beneficiaries are entitled under this chapter.

(3) A claimant may settle any third party case with the approval of the paying agency, in which event the paying agency is authorized to accept such a share of the proceeds as may be just and proper and the worker or the beneficiaries of the worker

shall receive the amount to which the worker would be entitled for a recovery under subsections (1) and (2) of this section. Any conflict as to what may be a just and proper distribution shall be resolved by the board.

(4) As used in this section, "paying agency" includes the Department of Consumer and Business Services with respect to its expenditures from the Workers' Benefit Fund in reimbursement of the costs of another paying agency for vocational assistance and the costs of claims of noncomplying employers.

(5) The department shall be repaid for its expenditures from the proceeds recovered by the paying agency in an amount proportional to the amount of the department's reimbursement of the paying agency's costs. All moneys received by the department under this section shall be deposited in the same fund from which the paying agency's costs originally had been reimbursed.

(6) Prior to and instead of the distribution of proceeds as described in subsection (1) of this section, when the worker or the beneficiaries of the worker are entitled to receive payment pursuant to a judgment or a settlement in the third party action in the amount of \$1 million or more, the worker or the beneficiaries of the worker may elect to release the paying agency from all further liability on the workers' compensation claim, thereby canceling the lien of the paying agency as to the present value of its reasonably expected future expenditures for workers' compensation and other costs of the worker's claim, if all of the following conditions are met as part of the claim release:

(a) The worker or the beneficiaries of the worker are represented by an attorney.

(b) The release of the claim is presented in writing and is filed with the Workers' Compensation Board, with a copy served on the paying agency, including the Department of Consumer and Business Services with respect to its expenditures from the Workers' Benefit Fund, the Consumer and Business Services Fund and the Self-Insured Employer Adjustment Reserve.

(c) The claim release specifies that the worker or the beneficiaries of the worker understand that the claim release means that no further benefits of any nature whatsoever shall be paid to the worker or the beneficiaries of the worker.

(d) The release of the claim is accompanied by a settlement stipulation with the paying agency, outlining terms of reimbursement to the paying agency, covering its incurred expenditures for compensation, first aid or other medical, surgical or hospital service and for expenditures from the Workers' Benefit Fund, the Consumer and Business Services Fund and the Self-Insured Employer Adjustment Reserve, to the date the release becomes final or the order of the board becomes final. If the payment of such incurred expenditures is in dispute, the release of the claim shall be accompanied by a written submission of the dispute by the worker or the beneficiaries of the worker to the board for resolution of the dispute by order of the board under procedures allowing for board resolution under ORS 656.587, in which case the release of the claim shall not be final until such time as the order of the board becomes final. In such a case, the only issue to be decided by the board is the amount of incurred expenses by the paying agent.

(e) If a service, item or benefit has been provided but a bill for that service, item or benefit has not been received by the paying agency before the release or order becomes final, the reimbursement payment shall cover the bill pursuant to the following process:

(A) The paying agency may maintain a contingency fund in an amount reasonably sufficient to cover reimbursement for the billing.

(B) If a dispute arises as to reimbursement for any bill first received by the paying agency not later than 180 days after the date the release or order became final, the dispute shall be resolved by order of the board.

(C) Any amount remaining in the contingency fund after the 180-day period shall be paid to the worker or the beneficiaries of the worker.

(D) Any billing for a service, item or benefit that is first received by the paying agency more than 180 days after the date the release or order became final is unenforceable by the person who issued the bill.

(f) The settlement or judgment proceeds are available for payment or actually have been paid out and are available in a trust fund or similar account, or are available through a legally enforceable structured settlement agreement if sufficient funds are available to make payment to the paying agency.

(g) The agreed-upon payment to the paying agency, or the payment to the paying agency ordered by the board, is made within 30 days of the filing of the withdrawal of the claim with the board or within 30 days after the board has entered a final order resolving any dispute with the paying agency.

(7) When a release of further liability on a claim, as provided in subsection (6) of this section, has been filed, and when payment to the paying agency has been made, the effect of the release is that the worker or beneficiaries of the worker shall have no further right to seek benefits pursuant to the original claim, or any independent workers' compensation claim regarding the same circumstances, and the claim shall not be reasserted, refiled or reestablished through any legal proceeding.

Credits

Formerly 656.322; Laws 1977, c. 804, § 16; Laws 1979, c. 839, § 12; Laws 1981, c. 540, § 1; Laws 1985, c. 600, § 12; Laws 1987, c. 373, § 35b; Laws 1993, c. 445, § 1; Laws 1995, c. 332, § 47; Laws 1995, c. 641, § 8; Laws 1997, c. 639, § 4.

Notes of Decisions (59)

O. R. S. § 656.593, OR ST § 656.593

Current with emergency legislation through Ch. 787 of the 2013 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 77 P.S. Workers' Compensation (Refs & Annos)
Chapter 5. Liability and Compensation (Refs & Annos)
Subrogation of Employer

Pennsylvania

77 P.S. § 671

§ 671. Subrogation of employer to rights of employee against third persons; subrogation of employer or insurer to amount paid prior to award

Currentness

Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employe, his personal representative, his estate or his dependents, against such third party to the extent of the compensation payable under this article¹ by the employer; reasonable attorney's fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employe, his personal representative, his estate or his dependents. The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employe, his personal representative, his estate or his dependents, and shall be treated as an advance payment by the employer on account of any future instalments of compensation.

Where an employe has received payments for the disability or medical expense resulting from an injury in the course of his employment paid by the employer or an insurance company on the basis that the injury and disability were not compensable under this act in the event of an agreement or award for that injury the employer or insurance company who made the payments shall be subrogated out of the agreement or award to the amount so paid, if the right to subrogation is agreed to by the parties or is established at the time of hearing before the referee or the board.

Credits

1915, June 2, P.L. 736, art. III, § 319. Reenacted and amended 1937, June 4, P.L. 1552, § 1. Reenacted 1939, June 21, P.L. 520, § 1. Amended 1945, May 18, P.L. 671, § 1; 1951, May 29, P.L. 507, § 1; 1956, Feb. 28, P.L. (1955) 1120, § 1; 1959, Dec. 28, P.L. 2034, § 4, effective Jan. 30, 1960; 1961, Sept. 30, P.L. 1762, § 2; 1972, March 29, P.L. 159, No. 61, § 20, eff. May 1, 1972.

Notes of Decisions (380)

Footnotes

¹ 77 P.S. § 411 et seq.

77 P.S. § 671, PA ST 77 P.S. § 671

Current through Regular Session Act 2013-72

West's Wisconsin Statutes Annotated
Employment, Compensation and Mining (Ch. 101 to 109)
Chapter 102. Worker's Compensation (Refs & Annos)

Wisconsin formula and
insurer's right to bring action

W S A . 102 . 29

102.29. Third party liability

Effective: April 17, 2012

Currentness

(1)(a) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to 102.66 are applicable, or the adjustment of any such claim, affect the right of the injured employee or the employee's dependents to recover compensation. An employer or compensation insurer that has paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under s. 102.66(1) or 102.81(1), the department shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel.

(b) If a party entitled to notice cannot be found, the department shall become the agent of that party for the giving of a notice as required in par. (a) and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate that party. Each shall have an equal voice in the prosecution of the claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in par. (a), the liability of the tort-feasor shall be determined as to all parties having a right to make claim, and, irrespective of whether or not all parties join in prosecuting the claim, the proceeds of the claim shall be divided as follows:

1. After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action.

2. Out of the balance remaining after the deduction and payment specified in subd. 1., the employer, the insurance carrier, or, if applicable, the uninsured employers fund or the work injury supplemental benefit fund shall be reimbursed for all payments made by the employer, insurance carrier, or department, or which the employer, insurance carrier, or department may be obligated to make in the future, under this chapter, except that the employer, insurance carrier, or department shall not be reimbursed for any payments made or to be made under s. 102.18(1)(bp), 102.22, 102.35(3), 102.57, or 102.60.

3. Any balance remaining after the reimbursement described in subd. 2. shall be paid to the employee or the employee's personal representative or other person entitled to bring action.

(c) If both the employee or the employee's personal representative or other person entitled to bring action, and the employer, compensation insurer, or department, join in the pressing of said claim and are represented by counsel, the attorney fees allowed

as a part of the costs of collection shall be, unless otherwise agreed upon, divided between the attorneys for those parties as directed by the court or by the department.

(d) A settlement of a 3rd-party claim shall be void unless the settlement and the distribution of the proceeds of the settlement are approved by the court before whom the action is pending or, if no action is pending, then by a court of record or by the department.

(2) In the case of liability of the employer or insurer to make payment into the state treasury under s. 102.49 or 102.59, if the injury or death was due to the actionable act, neglect or default of a 3rd party, the employer or insurer shall have a right of action against the 3rd party to recover the sum so paid into the state treasury, which right may be enforced either by joining in the action mentioned in sub. (1), or by independent action. Contributory negligence of the employee because of whose injury or death such payment was made shall bar recovery if such negligence was greater than the negligence of the person against whom recovery is sought, and the recovery allowed the employer or insurer shall be diminished in proportion to the amount of negligence attributable to such injured or deceased employee. Any action brought under this subsection may, upon order of the court, be consolidated and tried together with any action brought under sub. (1).

(3) Nothing in this chapter shall prevent an employee from taking the compensation that the employee may be entitled to under this chapter and also maintaining a civil action against any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist for malpractice.

(4) If the employer and the 3rd party are insured by the same insurer, or by the insurers who are under common control, the employer's insurer shall promptly notify the parties in interest and the department. If the employer has assumed the liability of the 3rd party, it shall give similar notice, in default of which any settlement with an injured employee or beneficiary is void. This subsection does not prevent the employer or compensation insurer from sharing in the proceeds of any 3rd-party claim or action, as set forth in sub. (1).

(5) An insurer subject to sub. (4) which fails to comply with the notice provision of that subsection and which fails to commence a 3rd-party action, within the 3 years allowed by s. 893.54, may not plead that s. 893.54 is a bar in any action commenced by the injured employee under this section against any such 3rd party subsequent to 3 years from the date of injury, but prior to 6 years from such date of injury. Any recovery in such an action is limited to the insured liability of the 3rd party. In any such action commenced by the injured employee subsequent to the 3-year period, the insurer of the employer shall forfeit all right to participate in such action as a complainant and to recover any payments made under this chapter.

(6)(a) In this subsection, "temporary help agency" means a temporary help agency that is primarily engaged in the business of placing its employees with or leasing its employees to another employer as provided in s. 102.01(2)(f).

(b) No employee of a temporary help agency who makes a claim for compensation may make a claim or maintain an action in tort against any of the following:

1. Any employer that compensates the temporary help agency for the employee's services.
2. Any other temporary help agency that is compensated by that employer for another employee's services.

3. Any employee of that compensating employer or of that other temporary help agency, unless the employee who makes a claim for compensation would have a right under s. 102.03(2) to bring an action against the employee of the compensating employer or the employee of the other temporary help agency if the employees were coemployees.

(c) No employee of an employer that compensates a temporary help agency for another employee's services who makes a claim for compensation may make a claim or maintain an action in tort against any of the following:

1. The temporary help agency.

2. Any employee of the temporary help agency, unless the employee who makes a claim for compensation would have a right under s. 102.03(2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

(6m)(a) No leased employee, as defined in s. 102.315(1)(g), who makes a claim for compensation may make a claim or maintain an action in tort against any of the following:

1. The client, as defined in s. 102.315(1)(b), that accepted the services of the leased employee.

2. Any other employee leasing company, as defined in s. 102.315(1)(f), that provides the services of another leased employee to the client.

3. Any employee of the client or of that other employee leasing company, unless the leased employee who makes a claim for compensation would have a right under s. 102.03(2) to bring an action against the employee of the client or the leased employee of the other employee leasing company if the employees and leased employees were coemployees.

(b) No employee of a client who makes a claim for compensation may make a claim or maintain an action in tort against any of the following:

1. An employee leasing company that provides the services of a leased employee to the client.

2. Any leased employee of the employee leasing company, unless the employee who makes a claim for compensation would have a right under s. 102.03(2) to bring an action against the leased employee if the employee and the leased employee were coemployees.

(7) No employee who is loaned by his or her employer to another employer and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who accepted the loaned employee's services.

(8) No student of a public school, as described in s. 115.01(1), or a private school, as defined in s. 115.001(3r), who is named under s. 102.077 as an employee of the school district or private school for purposes of this chapter and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

(8m) No participant in a community service job under s. 49.147(4) or a transitional placement under s. 49.147(5) who, under s. 49.147(4)(c) or (5)(e), is provided worker's compensation coverage by a Wisconsin works agency, as defined under s. 49.001(9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the community service job or transitional placement from which the claim arose.

(8r) No participant in a food stamp employment and training program under s. 49.79(9) who, under s. 49.79(9)(a)5, is provided worker's compensation coverage by the department of health services or by a Wisconsin Works agency, as defined in s. 49.001(9), or other provider under contract with the department of health services or a county department under s. 46.215, 46.22, or 46.23 or tribal governing body to administer the food stamp employment and training program and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the employment and training from which the claim arose.

(9) No participant in a work experience component of a job opportunities and basic skills program who, under s. 49.193(6)(a), 1997 stats., was considered to be an employee of the agency administering that program, or who, under s. 49.193(6)(a), 1997 stats., was provided worker's compensation coverage by the person administering the work experience component, and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the work experience from which the claim arose. This subsection does not apply to injuries occurring after February 28, 1998.

(10) A practitioner who, under s. 257.03, is considered an employee of the state for purposes of worker's compensation coverage while providing services on behalf of a health care facility, the department of health services, or a local health department during a state of emergency and who makes a claim for compensation under this chapter may not make a claim or maintain an action in tort against the health care facility, department, or local health department that accepted those services.

(11) No security officer employed by the department of military affairs who is deputed under s. 59.26(4m), who remains an employee of the state for purposes of worker's compensation coverage while conducting routine external security checks around military installations in this state, and who makes a claim for compensation under this chapter may make a claim or bring an action in tort against the county in which the security officer is conducting routine external security checks or against the sheriff or undersheriff who deputed the security officer.

Credits

<<For credits, see Historical Note field.>>

Notes of Decisions (167)

W. S. A. 102.29, WI ST 102.29

Current through 2013 Wisconsin Act 45, published 8/06/2013.