

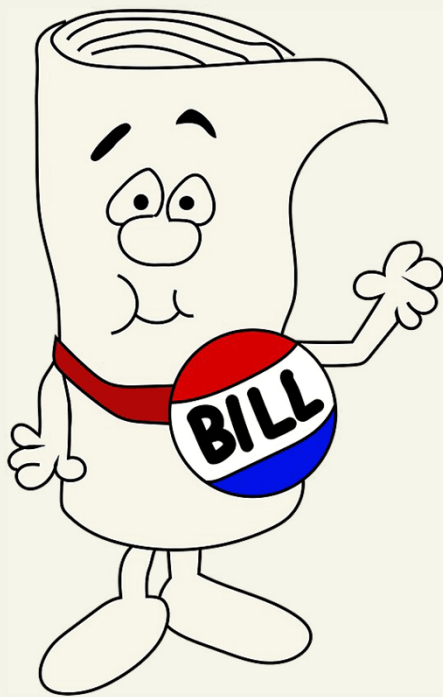
WHAT'S NEW IN WISCONSIN WORKER'S COMPENSATION? A LEGAL UPDATE

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AMENDMENTS TO WI WORKER'S COMPENSATION ACT



- Major updates to the Wisconsin Worker's Compensation Act took effect April 1, 2026.
 - **Procedural** amendments apply to all dates of injury
 - **Substantive** amendments apply only to claims involving dates of injury on or after April 1, 2026.

AMENDMENTS AFFECTING PPD

- **PPD rate** maximum increased from \$446 to \$454 for DOI on or after April 1, 2026, and to \$462 for DOI on or after January 1, 2027.
- **"Stacking" of PPD** ratings no longer allowed for employees undergoing the same surgical procedure a second or subsequent time on the same limb; the employee's PPD rating in those cases shall be determined by the health care provider.



POLL QUESTION #1

- Employee suffers right knee injury that is initially treated with a meniscectomy, but she ultimately requires a total knee replacement. The medical experts agree both procedures are related to the work injury.
- How much permanency is the employee entitled to receive?

POLL QUESTION #1 OPTIONS

- A. No minimum applies
- B. 45%
- C. 50%
- D. 55%

POLL ANSWER #1

- 5% for the statutory minimum at the time of the meniscectomy.
- AND 50% for the statutory minimum at the time of the total knee replacement.
- Why?
 - Because they are not the same surgery, so the minimums still stack on top of each other.

POLL QUESTION #2

- Employee suffers right knee injury causing an ACL rupture that is surgically reconstructed. A couple years later she requires a revision ACL reconstruction. The medical experts agree both procedures are related to the work injury.
- What is the amount of permanent partial disability she is entitled to receive?

POLL QUESTION #2 OPTIONS

- A. 10%
- B. 15%
- C. 20%

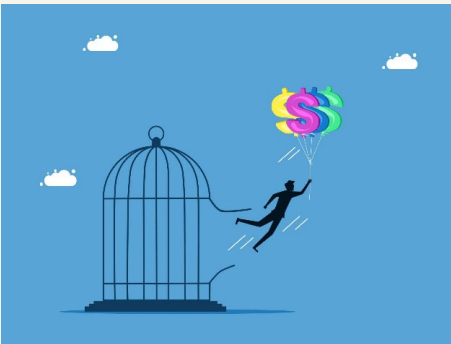
POLL ANSWER #2

- ACL repair #1: Statutory minimum 10% PPD
- ACL repair #2: No statutory minimum, rated per expert opinion
- Why?
- Same surgery performed on the same limb so the statutory minimum only applies to the first procedure.

AMENDMENTS AFFECTING SUPPLEMENTAL BENEFITS

- **Supplemental benefit availability** extended to DOIs before January 1, 2020.
- **Supplemental benefit rate** raised to correspond to benefits in effect for the year 2020; indexes the benefits so that the supplemental benefit rate is increased every January 1.
- **Reimbursement Request** from WISBF must be submitted electronically (but no reimbursement for DOI > 2016).

AMENDMENTS AFFECTING COMPROMISE AGREEMENTS



- **Restricted bank accounts** no longer necessary for unaccrued portion of settlement.

- **Dismissal of Hearing Application** required upon approval of a compromise agreement, regardless of date of injury.



AMENDMENTS AFFECTING STATUTE OF LIMITATIONS

- Payments pursuant to compromise agreement no longer considered advance payment of compensation, i.e., statute of limitations begins to run on the date of the order approving the compromise agreement.
- Statute of limitations is tolled by filing of Hearing Application but not extended – retroactive to all dates of injury.
- Serious trauma claims now include injuries requiring shoulder replacement
- Dismissal of Hearing Application required if no justiciable dispute.

POLL QUESTION #3

- Employee suffers traumatic left shoulder injury on 6/1/2022.
- He files Hearing Application on 6/1/2024. He goes MIA and the Hearing Application is dismissed due to lack of prosecution on 12/1/2025.
- When does the Statute of Limitations Run?

POLL QUESTION #3 OPTIONS

- A. 6/1/2028 – 6 years
- B. 12/1/2029 – 6 years + time application was pending
- C. 6/1/2034 – 12 years

POLL ANSWER #3

- Under the amendments, the statute of limitations expires on 6/1/2028.
 - The statute of limitations was temporarily paused while the Hearing Application was pending but the time frame is not extended after dismissal.
- Previously, the statute of limitations would not have expired until December 1, 2029.
 - The time frame would have been extended for the same period of time the Hearing Application was pending.

AMENDMENTS AFFECTING BURDEN OF PROOF

- PTSD claims that do not require a showing of "extraordinary stress" expanded to include emergency medical responders, emergency medical services practitioners, part-time and volunteer fire fighters.
- Physician assistants, advanced practice registered nurses, and audiologists can give opinions on diagnosis, necessity of treatment, and cause and extent of disability (previously only allowed to opine on latter two).
- Vocational records may be admitted into evidence at hearing without requiring DVR counselor to be present to authenticate the records.



MISCELLANEOUS AMENDMENTS

- Nurse case managers cannot be restricted access to records and participation in discharge planning when required to ensure injured worker has appropriate housing and transportation following inpatient hospitalization.
- Penalties for failure to carry worker's compensation coverage increased; penalty added for employer providing false information about coverage to employees/contractors.
- Fraud reporting requirements extended to insurers with evidence that an application for coverage is fraudulent or that employer has committed fraud by misclassifying employees to lower premiums.

FROM THE COURT OF APPEALS



BRUCE BELLAND TRUCKING INC. V. LABOR AND INDUSTRY REVIEW COMMISSION, 31 N.W.3D 920 (CT. APP. DECEMBER 2, 2025)

Background

- Employee injured his knee on the job (Feb. 26, 2018) while exiting a truck
- Had surgery; released to return to work without restrictions by April 18, 2018
- Notified employer of return date; briefly out of town for a family event
- Upon calling back April 22, was told his truck was sold and he no longer had a job

Employer's Initial Defense

- Business sharply declined in spring 2018 due to oak wilt and road weight restrictions
- Employer sold two of three trucks in April 2018
- No suitable work or equipment available on April 22 — this was accepted as valid economic justification

BRUCE BELLAND TRUCKING INC. V. LABOR AND INDUSTRY REVIEW COMMISSION

Where the Employer Went Wrong

- When road weight limits lifted on May 24, 2018, the employer hired a new worker instead of offering the job to the injured employee first
- The employer had a continuing duty to rehire the former employee when work became available
- That duty was violated by skipping over the injured worker in favor of a new hire

Key Take-Aways

- The duty to rehire is ongoing, not a one-time obligation at the moment of injury recovery
- The duty does not expire simply because time has passed (though the court acknowledged it could at some point)

GLOTHON V. LABOR AND INDUSTRY REVIEW COMMISSION, SLIP OP. 2024AP2102 (MAY 20, 2026)

Background

- Applicant was an over-the-road trucker who filed a workers' compensation claim against CEVA Logistics
- CEVA argued he was an independent contractor, not an employee — and therefore not covered under their workers' comp insurance
- Commission and Court of Appeals both sided with CEVA

The Legal Test

- Wisconsin uses a **9-factor test** under **Wis. Stat. § 102.07(8)(b)** to determine independent contractor status
- A worker must meet **all 9 factors** to be classified as an independent contractor
- The applicant challenged only 2 of the 9 factors on appeal

GLOTHON V. LABOR AND INDUSTRY REVIEW COMMISSION

Factor 1: Separate Business Office

- Applicant argued he had no separate business office with equipment
- Court held that a **physical brick-and-mortar office is not required** and is not dispositive
- The nature of over-the-road trucking simply doesn't lend itself to a fixed office location
- Existing case law supported the Commission's finding on this factor
- Factor 2: Control Over Means of Performing Work
- Applicant claimed CEVA controlled his routes by providing them and requiring deviation notices
- CEVA's evidence told a different story:
 - Drivers received a suggested fuel-efficient route for payment calculation purposes only
 - Drivers were **free to accept or reject jobs entirely**
 - Drivers could choose **any route** — no notification to dispatch require
 - Drivers chose their **own working days**
 - Hours were tracked for **DOT compliance only**, not for pay
 - Displaying CEVA branding on the truck did **not** make the driver an employee

GLOTHON V. LABOR AND INDUSTRY REVIEW COMMISSION

Key Take-aways

- Employers defending independent contractor status should document **contractual freedom** clearly — route choice, load refusal rights, and scheduling flexibility are all meaningful
- **Branding or signage** on equipment alone does not establish an employment relationship
- For industries like trucking, the absence of a physical office will **not** defeat independent contractor status

FROM THE LABOR AND INDUSTRY REVIEW COMMISSION



O'BRIEN V. AMERICAN ALUMINUM EXTRUSION, CLAIM No. 2015-005808 (LIRC MAY 29, 2026)

Background

- Applicant was promoted to a press operator position
- While training his replacement in his former job, he partially amputated his left index finger
- After several months of treatment, he was released to work without restrictions

The Return to Work

- Applicant returned to the employer in the press operator position
- Within two months, he was moved to another department
- He received limited training for the new job and was singled out for documentation requirements
 - He was criticized and threatened because of the injury and falsely accused of misconduct
 - Human resources denied help, and the employer prevented him from transferring

O'BRIEN V. AMERICAN ALUMINUM EXTRUSION

A Hostile and Untenable Environment

- Applicant was specifically told that the employer wanted him gone because of the work injury
- He was warned that he was being watched for reasons to be discharged
- The reassignment, scrutiny, threats, and blocked transfer made continued employment untenable
- Applicant ultimately resigned

The Decision under § 102.35(3)

- The ALJ awarded the maximum benefits available under Wis. Stat. § 102.35(3); LIRC affirmed
- Rehiring must be in good faith — with the intent to retain the injured employee as other employees would be retained
- An employer cannot avoid liability by engineering a resignation; the applicant's voluntary departure did not defeat the claim because the purported rehire was pretextual from the outset

RIVERA V. NESTLE USA, INC.,

CLAIM NO. 2023-012003 (LIRC JULY 15, 2025)

Background

- Applicant was injured in a workplace incident — either an assault or a fight with a co-worker
- Both the applicant and the co-worker involved were terminated
- Applicant (self-represented) sought medical expenses, temporary disability benefits, refusal to rehire penalties, and several claims outside the scope of workers' comp

What Was Awarded at the ALJ Level

- Medical expenses and temporary disability benefits were awarded for a knee injury requiring two surgeries
- Temporary total disability (TTD) benefits were **denied** after the end-of-healing date assigned by Dr. Barron
- The ALJ found the applicant **not credible** due to:
 - Significant inconsistencies in testimony
 - Demonstrated animosity toward the employer and the litigation process

RIVERA V. NESTLE USA, INC.

The Appeal to LIRC

- The only issue on appeal was TTD benefits for the period *after* Dr. Barron's end-of-healing date
- Applicant attempted to submit new exhibits on appeal — these were **rejected and not considered**
- Legal cases cited by the applicant **did not support** the propositions he claimed they did
- Despite these missteps, LIRC reversed the ALJ and awarded the additional TTD benefits

Why LIRC Reversed

- The **medical records and expert opinions** — already in the record — supported that the applicant remained in the healing period beyond Dr. Barron's assigned date
- Credibility issues with the applicant's testimony did **not** override objective medical evidence
- LIRC reviews cases on a **de novo basis**, meaning it independently evaluates the evidence rather than simply deferring to the ALJ's findings

RIVERA V. NESTLE USA, INC.

Key Takeaways

- **Medical records can carry the day** even when an applicant is found not credible — objective evidence stands on its own
- The **de novo standard** of LIRC review means credibility findings at the ALJ level are not binding on appeal
- New evidence submitted for the first time on appeal to LIRC **will not be accepted**
- Poor appellate advocacy (bad citations, procedural missteps) won't necessarily sink a claim if the underlying record supports it
- An applicant's **hostility or animosity** toward the employer/process is not a basis to deny otherwise supported medical benefits

STANEK V. CITY OF BELOIT,

CLAIM No. 2017-005612 (LIRC JULY 22, 2025)

Background

- Applicant sustained a compensable left knee injury on January 6, 2017
- A 2018 Commission decision (final and unappealed) awarded **5% PPD** for a meniscal repair surgery
- Applicant later required a **total knee replacement**, triggering a new dispute over additional permanent partial disability (PPD)
- **The Medical Opinions**
- Respondents relied on IME reports from **Dr. Thomas Viehe**, who opined:
- The work injury and arthroscopic surgery were partially responsible for the knee replacement
- The “**biggest cause**” of the knee replacement was the applicant’s **preexisting arthritis**
- Total PPD rating: **60%** (50% for the knee replacement + 10% for lost range of motion)
- Apportionment: **75% to preexisting degenerative joint disease / 25% to the work injury**

STANEK V. CITY OF BELOIT

LIRC's Analysis of § 102.175(3)

- The statute uses the word “**disability**” — not “condition” or “disease”
- No definition of “disability” exists in Chapter 102, so LIRC looked to related law:
 - **Wis. Stat. § 102.61** incorporates federal rehabilitation law (29 USC 701–796l)
 - That law defines disability as a physical or mental impairment that constitutes a **substantial impediment to employment**
- Key finding: **§ 102.175(3) requires a preexisting *disability*, not merely a preexisting condition**
- The applicant had no preexisting left knee disability before the work injury — arthritis alone did not meet the threshold

Applying the Cumulative Surgery Rule

- Under ***DaimlerChrysler c/o ESIS v. LIRC and Glenn May***, an applicant is entitled to the minimum PPD rating for each cumulative surgery attributable to one work injury
- Surgeries here: meniscal repair (5%) + total knee replacement (50%) = **minimum 55% PPD**
- Dr. Viehe’s credible assessment of lost range of motion supported an additional 10%, bringing the total to **60% PPD**
- Full **60% PPD** awarded — no apportionment applied

STANEK V. CITY OF BELOIT

Key Takeaways

- **Preexisting arthritis or degenerative disease ≠ preexisting disability** under § 102.175(3) — the condition must have constituted a substantial impediment to employment before the work injury
- Employers and insurers **cannot invoke the apportionment statute** simply because a preexisting condition contributed to the need for surgery
- The **DaimlerChrysler cumulative surgery rule** sets a minimum PPD floor — each surgery tied to the same work injury adds to the baseline entitlement
- IME physicians should address not just causation and apportionment, but whether any **preexisting functional disability** existed prior to the work injury — that is the threshold question

HARAZIN V. TRI CITY NATIONAL BANK, CLAIM No. 2022-012608 (LIRC SEPTEMBER 30, 2025)

Background

- Applicant worked as a customer service representative
- Alleged a low back injury from sitting in a chair left at an unexpectedly higher height than anticipated
- Did **not report the injury immediately** and did not seek treatment **for two days**

Problems with the Applicant's Account

- The **initial medical record** described back pain after sitting in a chair for a while — no mention of the unexpected chair height as the cause
- The claimed mechanism of injury was **inconsistently reported**
- Applicant treated for a few months, then reported resolution of most symptoms
- Returned for treatment a few months later (MRI and X-ray obtained), then had **no treatment for approximately five years**
- Later underwent a hip replacement and extensive chiropractic care — claimed as related to the original incident

HARAZIN V. TRI CITY NATIONAL BANK

ALJ and LIRC Findings

- Both the ALJ and LIRC **denied the claim** — LIRC affirmed the ALJ's decision
- Applicant was found **not credible**, primarily due to:
 - Inconsistent descriptions of the mechanism of injury
 - Initial medical records that did not support the claimed cause
- Because credibility was undermined, the applicant's **subjective symptom reporting weakened her treating provider's opinions**

Medical Opinion — Dr. Wojciehoski

- Opined that sitting down on a chair at the wrong height was **not a sufficient mechanism** to cause the level of injury alleged
- This opinion was **adopted** by the Commission
- Imaging revealed **degenerative changes** consistent with age/condition — not a traumatic workplace injury

HARAZIN V. TRI CITY NATIONAL BANK

The Time Gap Was Fatal to the Claim

- Applicant worked for **12 years without restrictions** following the alleged injury
- Nearly **six years passed** without significant medical treatment before symptoms allegedly recurred
- LIRC found the renewed treatment and complaints **were too distant in time** to logically connect to the original incident under the facts presented

EVITCH V. PARKER-HANNIFIN CORP., 2022-014870 (LIRC MAR. 19, 2026)

Background

- Applicant worked as a material handler, loading and unloading materials up to 50 lbs
- Began treating for right elbow symptoms in November 2021; ultimately underwent extensor tendon repair surgery in April 2022
- Self-insured employer (Parker-Hannifin) denied the claim by letter on July 13, 2022

The Denial Letter — What Went Wrong

- The denial letter was vague, stating only that the claim was being denied as “not compensable”
- **It failed to:**
 - Advise the applicant of her **right to appeal**
 - Identify what **additional information** was needed to reinstate benefits
- This bare-bones denial became central to the bad faith finding

EVITCH V. PARKER-HANNIFIN CORP.

The Medical Record at the Time of Denial

- Treating providers consistently attributed symptoms to work activities (“overuse at work”)
- Dr. Cronrath (post-surgery) noted causation had **already been determined** by a physician and he would not re-evaluate it
- NP Wohlk repeatedly **deferred causation** to the treating physician
- Critically — **no provider had disputed causation** at the time of denial
- Dr. McCormick (the surgeon) had not offered a causation opinion, but nothing in the record contradicted work causation either

What Happened After the Denial

- Dr. Sherman (October 2022) opined the work exposure **directly caused** the right elbow condition and was a material contributory causative factor
- Parker-Hannifin commissioned its own record review — **Dr. Kummer also concluded work activities directly caused the condition**
- The parties ultimately stipulated to payment of TTD, PPD, and medical expenses — bad faith claim expressly reserved

EVITCH V. PARKER-HANNIFIN CORP.

Bad Faith Finding & Penalty

- ALJ assessed a **200% bad faith penalty**
- LIRC affirmed in full, finding:
- Dr. Cronrath's note alone **eliminated any reasonable basis** for denying the claim
- Even if that note were ambiguous, Dr. Sherman's October 2022 report provided a **separate and equally compelling** basis for bad faith
- The employer's **own IME ultimately supported compensability** — further undermining the denial

Penalty Calculation Dispute

- Applicant argued the penalty should be **\$30,000** and based on the **full, unadjusted medical expenses** (including amounts written off or paid by group health)
- LIRC declined, reasoning:
 - Parker-Hannifin, as a **self-insured employer**, paid all medical expenses regardless of whether the WC claim was accepted
 - No evidence that any amounts were **reduced as a result of the denial**
 - No evidence providers sought to **collect written-off amounts** from the applicant personally

RATH V. COSTCO WHOLESALE CORP., CLAIM NOS. 2021-011876 AND 2022-010936 (LIRC JULY 13, 2026)

Background

- Applicant alleged a January 25, 2020 occupational injury
- She reported the injury in July 2020 after returning from COVID-related leave
- A treating provider supported work causation in June 2020 medical records

Reporting and Initial Investigation

- The employer did not report the claim to its third-party administrator until January 2021
- The adjuster began investigating just over one week after the employer's report
 - Claims notes treated the claim as being reported **by the applicant over one year late**
 - However, January 2021 was the date **the employer** reported the claim to the third party administrator
 - Medical records supporting causation arrived about three weeks after the claim was reported by the employer

RATH V. COSTCO WHOLESALE CORP.

The independent medical examination process

- About nine weeks after getting the claim, the adjuster first notified the applicant of an intent to schedule an independent medical examination
- The applicant denied receiving notice at that time and did not recall any contact from the adjuster until May 2021.
- In June 2021, the applicant was notified of the date of the examination.
- The record offered **no explanation** for the delay in getting the examination scheduled.

The Written Denial

- On May 13, 2021, the adjuster was told by a defense attorney that **prejudice or being misled** was required to support denying benefits for late notice; and that this was a high bar that no reported Wisconsin case had met
- Written denial issued the **next day** based on failure to give notice within **30 days**

RATH V. COSTCO WHOLESALE CORP.

Bad Faith Finding & Penalty

- The ALJ awarded bad-faith penalties in the amount of 20%; **LIRC affirmed**
- The adjuster failed to act expeditiously in getting the independent medical examination scheduled.
- The written denial for late notice could have been provided within the statutory 14 days; and there was no explanation as to why that was not done until 3.5 months after the employer reported the injury to the third-party administrator.

Why the Award Was 20% — Not 200%

- No statute or rule sets a specific deadline for securing an independent medical examination at the outset of a questionable claim.
- The only express examination deadline is notifying an individual within 30 days of the need for an evaluation to address a permanency rating.
- The absence of a specific deadline did not excuse the unexplained delay or late notice of the denial basis
- The independent medical examiner ultimately supplied medical support for denying the claim
- Bad faith awards can be **up to** 200%; the independent medical examiner's opinion supported the award being only 20%.

REETZ V. MAYO CLINIC, CLAIM No. 2017-001204 AND 2018-002522 (LIRC JANUARY 29, 2026)

Background

- Applicant worked as a full-time housekeeper for Mayo Clinic
- Three separate injury claims arose from one employment:
 - **Right shoulder** — July 2016, lifting a heavy trash bag
 - **Low back** — November 2016, during physical therapy pendulum exercise
 - **Left shoulder** — January 2018, alleged overcompensation for right shoulder

ALJ Decision

- Denied **all three claims**
- Found the applicant **not credible**, noting it was unreasonable to wait 10 weeks before treating a right shoulder injury
- LIRC affirmed in part and **reversed in part**

REETZ V. MAYO CLINIC

Right Shoulder — LIRC Reversed (Compensable)

- LIRC disagreed with the ALJ's credibility finding on this claim
- Found it reasonable that this particular applicant would **wait to see if symptoms resolved** before seeking treatment — delay alone does not equal non-credibility
- The mechanism of injury (lifting a shifting heavy bag) was found **plausible** to cause a right shoulder injury

Low Back — LIRC Affirmed Denial

- Alleged injury occurred during a **pendulum exercise** — standing, slightly bent, leaning forward
- The applicant did not bend fully forward, twist, or turn at the waist during the exercise
- Notably, during later exams with Dr. Fitzgerald, the applicant **bent significantly further forward** than during the alleged injurious activity — undermining the claimed severity of the mechanism
- Dr. Monacci (IME) opined the pendulum exercise would **not** be a significant factor in her low back condition

REETZ V. MAYO CLINIC

Left Shoulder — LIRC Affirmed Denial

- Applicant claimed left shoulder pain from **overcompensating** for her injured right shoulder
- By the time left shoulder symptoms appeared, right shoulder restrictions had been **significantly reduced** — only restriction was no vibratory tools or torquing
- No basis to conclude she was still **overusing her left arm** to protect the right at that point
- Dr. Fitzgerald offered **no explanation** connecting the left shoulder condition to the work injury or exposure

Takeaways

- Treating physicians are entitled to **no special presumption** of correctness — there is no legal authority giving a treating doctor's opinion greater weight simply because they treated the patient
- A causation opinion **without explanation** connecting the condition to the work injury carries little persuasive weight

NOVAK V. INNOVATIVE COMPANIES ET AL., WC CLAIM No. 2019-011855 (LIRC Oct. 16, 2025)

Background

- Applicant worked as a carpenter and was seriously injured on March 19, 2019, when roof trusses collapsed during installation
- He had objected to the installation method as unsafe but followed instructions anyway
- Two companies denied employing him on the date of injury: **Innovative Companies** and **Van Rite & Father, Inc.**

How the Work Arrangement Came About

- Applicant was originally employed by **Innovative Companies** (owner: Bill Schmook)
- In February 2019, **Dan Van Rite** contacted Schmook seeking workers for a strip mall project
- Schmook agreed to send workers at **\$27.50/hour**
- While on the project, **Van Rite and his foreperson directed all work** — Schmook was never on site and provided no oversight

NOVAK V. INNOVATIVE COMPANIES ET AL.

The OSHA Complication

- During the OSHA investigation, both the applicant and Schmook told investigators the applicant worked for **Van Rite & Father**
- Dan Van Rite denied this, claiming Innovative was a subcontractor
- At the WC hearing, the applicant **reversed his OSHA statement**, claiming he was an Innovative employee — and alleged Schmook had **threatened his probation** to coerce the earlier statement
- Schmook testified the applicant was working for Van Rite at the time of injury

ALJ Decision — Temporary Help Agency Theory

- ALJ found Innovative was acting as a “**temporary help agency**” under **Wis. Stat. § 102.01(2)(f)**
- Under that theory, Innovative “placed” the applicant with Van Rite & Father and was therefore **responsible for WC benefits**

NOVAK V. INNOVATIVE COMPANIES ET AL.

LIRC Reversed — Temporary Help Agency Test Not Met

- The statute requires that the **company receiving the workers pays the placing employer** for those services
- Here, **Van Rite & Father paid neither Innovative nor the applicant directly** for any work performed
- Without that payment flow, the temporary help agency classification **did not apply**

LIRC Applied the “Loaned Employee” Test — *Seaman Body Corp.* The four-factor test asks:

- Did the employee actually or impliedly **consent** to work for the special employer?
- **Whose work** was being performed at the time of injury?
- Who had the **right to control** the details of the work?
- For whose **primary benefit** was the work being done?

NOVAK V. INNOVATIVE COMPANIES ET AL.

All four factors pointed to **Van Rite & Father**:

- The applicant was performing Van Rite's strip mall construction
- Van Rite and his foreperson **directed all work on site**
- Schmook was **never present** and exercised no control
- The project benefited Van Rite & Father
- **Van Rite & Father** was found to be the liable "special employer" responsible for all WC benefits

Key Legal Takeaways

- The **temporary help agency** classification under § 102.01(2)(f) requires a **payment relationship** between the receiving employer and the placing employer — without it, the statute does not apply
- When workers are informally shared between businesses, the **loaned employee/special employer** test (Seaman Body Corp.) determines WC liability
- **On-site direction and control** is a heavily weighted factor — the entity actually supervising the work bears significant exposure

THOMAS V. CO-STAFF CORP., HEARING NO. 25006183MD (LIRC DEC. 5, 2025)

Background

- Employee was discharged on August 13, 2025 for allegedly violating the employer's alcohol policy
- Policy stated an employee “**who appears under the influence of alcohol at work can be discharged**”
- A client complained the employee appeared intoxicated
- Employee submitted to a breathalyzer — result: **BAC of 0.06%**

The Employee’s Position

- Admitted to consuming alcohol
- Did **not** dispute the breathalyzer result
- Maintained she was **not intoxicated** and was capable of performing her work normally

THOMAS V. CO-STAFF CORP.

ALJ and Commission Findings

- Both the ALJ and LIRC found the employer **did not prove misconduct** under Wis. Stat. § 108.04(5)(a)
- Discharge was found to be **not for misconduct** — unemployment benefits were not disqualified

Why the Employer's Case Failed

- A BAC of **0.06%** **does not trigger a presumption of intoxication** — that threshold is **0.08%** under Wisconsin law
- The employer's policy focused on whether the employee **“appears”** under the influence — an observational standard
- The employer relied on a **client complaint** but presented no **firsthand testimony** of observable signs of intoxication such as:
 - Slurred speech
 - Difficulty walking
 - Impaired behavior or performance
- Without firsthand observational evidence, the employer could not establish the employee had violated the specific language of its own policy

THOMAS V. CO-STAFF CORP.

Key Legal Takeaways

- A BAC **below 0.08%** does not automatically establish intoxication for workplace policy purposes — additional proof is required
- When an alcohol policy is based on **appearance of intoxication**, the employer must support that standard with **direct, firsthand observational evidence**
- A **client complaint alone**, without corroborating witness testimony from supervisors or coworkers who observed the employee, is **insufficient** to prove policy violation
- The burden of proving misconduct in unemployment proceedings **rests with the employer**

GENDRICH V. CITY OF WEST ALLIS, CLAIM No. 2024-000405 (LIRC SEPTEMBER 18, 2025)

Background

- Employee had **two separate periods of employment** with the City of West Allis, with a gap between them
- First period ended in **1986**; second period ended with **retirement in 2019**
- Employee filed for occupational hearing loss benefits after retirement
- Benefits were awarded; City of West Allis appealed on two grounds

GENDRICH V. CITY OF WEST ALLIS

Argument 1: Should not be responsible for the first period of employment (pre-1986)

- Employer argued it should not bear liability for hearing loss attributable to the earlier work period
- LIRC rejected this — under **Wis. Stat. § 102.555(4)**, the employee may elect the **last day worked before retirement** as the injury date
- The **last employer with noise exposure** is the responsible party for occupational hearing loss
- A **gap in employment** between the two periods did not change this outcome
- City of West Allis, as the final employer with noise exposure, was **fully responsible**

Argument 2: Should be able to deduct hearing loss shown in the 2011 audiogram

- Employer argued the 2011 audiogram — taken before the second employment period began — reflected "prior" hearing loss that should be subtracted from the total award
- LIRC rejected this as well, for two reasons:
 - The City of West Allis was the **sole source of noise exposure** — no other employer contributed to the hearing loss
 - The employee had **never been compensated** for any hearing loss based on the 2011 testing
- Deducting uncompensated prior impairment caused by the same employer would be inappropriate — the **full measured impairment was properly awarded**

GENDRICH V. CITY OF WEST ALLIS

Key Legal Takeaways

- Under **§ 102.555(4)**, the employee has the right to **elect the injury date**, including the last day worked before retirement — this is a significant strategic tool in hearing loss claims
- The **last employer with occupational noise exposure** bears full liability for hearing loss, regardless of employment gaps or multiple employment periods
- An employer seeking to **offset a prior audiogram** must show that the earlier hearing loss was caused by a **different source of noise exposure** or was **previously compensated**
- If no other employer contributed noise exposure and no prior compensation was paid, a prior audiogram alone **does not reduce the award**

TUGGLE V. DOLLAR TREE STORES, INC., CLAIM No. 2020-015347 (LIRC AUG. 20, 2025)

Background

- Applicant sustained a work-related concussion and sought multiple benefits, including **permanent total disability (PTD)**
- Claims were denied in their entirety at the ALJ level; LIRC **affirmed**
- The case turned almost entirely on **credibility**

Why the Applicant Was Found Not Credible

1. Concealed Preexisting Conditions

- Applicant failed to disclose her **preexisting symptoms and prior treatment** to her treating provider
- She had previously been approved for **Social Security Disability Income (SSDI)** based on restrictions she later minimized or expressed confusion about during testimony
- She demonstrated **selective recall** — sharp memory for post-injury symptoms, but conveniently vague about pre-injury limitations

TUGGLE V. DOLLAR TREE STORES, INC.

2. Pain Medication Contract Non-Compliance

- Applicant reported **high levels of pain** but failed to take her prescribed narcotic pain medication as directed
- She had **fewer pills remaining than expected**
- A drug test showed **no narcotic present** in her system
- The disconnect between reported pain severity and actual medication use significantly undermined her credibility

3. Medical Records Contradicted Her Testimony

- Her subjective complaints were inconsistent with the objective medical record
- Dr. Bugarino conducted an **in-person examination** and reviewed all prior records — opined the injury was **temporary and fully resolved**

4. The Incident Video

- Video footage of the incident was introduced at hearing
- When viewed alongside the **initial post-injury medical treatment**, the video supported the conclusion that the injury was **unlikely as significant as claimed**

TUGGLE V. DOLLAR TREE STORES, INC.

Key Legal Takeaways

- **Concealing preexisting conditions** from treating providers is a serious credibility issue — and LIRC will draw negative inferences when prior treatment history is withheld
- **Pain medication non-compliance can** directly contradict claimed pain levels — drug testing and pill counts are legitimate tools to assess credibility
- **Incident videos** are powerful evidence — when objective footage conflicts with a claimant's account, the video will often carry the day

PETERSON V. MENARD, INC., WC CLAIM No. 2012-023179 (LIRC OCT. 16, 2025)

Background

- Applicant alleged a permanent back injury from a motor vehicle accident on September 6, 2012, while working for Menard, Inc.
- Three physician opinions were in play — two treating, one IME — all reaching different conclusions

The Medical Opinions

Dr. Jung (Treating)

- Accident **directly caused** a permanent back injury
- Rated PPD at “**10–15%**” for limitations in mobility, pain, and exacerbation with lifting, bending, and twisting
- Assessed permanent disability but **no permanent work restrictions**

PETERSON V. MENARD, INC.

Dr. Bratanow (Treating)

- Accident caused a **permanent aggravation** of a preexisting back condition
- Imposed permanent restrictions: **No lifting over 30 lbs**, limited squatting, kneeling, and standing
- Assessed permanent restrictions but **no permanent disability rating**

Dr. Fetter (IME)

- Found **no back injury** from the accident
- Conditions were entirely **preexisting and degenerative**
- Assessed **no permanent disability** and **no permanent restrictions**

PETERSON V. MENARD, INC.

ALJ Decision

- Awarded **15% PPD** (high end of Dr. Jung's range)
- Adopted Dr. Bratanow's permanent restrictions as credible
- Respondents appealed, arguing the ALJ improperly "cherry-picked" from two different experts

LIRC — Affirmed in Part, Reversed in Part

On the PPD Rating:

- LIRC reduced the award — Dr. Jung **failed to explain** what factors would justify a rating at the higher end of his stated range
- The applicant had **continued working with restrictions** since the accident and had **never undergone surgery** that would warrant a minimum statutory PPD rating

On the Permanent Restrictions:

- LIRC upheld Dr. Bratanow's permanent restrictions as credible

On the "Cherry-Picking" Argument:

- LIRC **rejected the respondents' argument** outright
- Cited *Manitowoc County v. DILHR* — the Commission is expressly permitted to **accept part of an expert's opinion while rejecting other parts**

QUESTIONS / CONTACT

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