



Newsletter

October 2017

Wisconsin Independent Businesses...Helping you where you need it.

State Lawmakers Partially Repeal Wisconsin's Personal Property Tax

Late last month, Governor Walker signed into law the most significant reduction in Wisconsin's personal property tax in nearly forty years. Back then, the personal property taxes on business inventories and farmers' livestock were repealed.

Under 2017 Wisconsin Act 59, effective with property assessed as of January 1, 2018, machinery, tools and patterns (Schedule C from Statement of Personal Property) will be exempt from the personal property tax for businesses not specifically classified by the Wisconsin Department of Revenue (DOR) as manufacturers.

For purposes of the exemption, machinery is defined as a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but machinery does not include a building. All personal property that fits this description will be exempt from the personal property tax beginning January, 2018.

To prevent a shift in the property tax burden to



The Assembly Chambers at the Wisconsin State Capitol.

other classes of property, Act 59 directs the State of Wisconsin to reimburse local municipalities for the loss of revenue resulting from this personal property tax exemption.

In 2017, the statewide value of personal property categorized as non-manufacturing machinery, tools and patterns was \$3.35 billion. The non-partisan Legislative Fiscal Bureau estimates that the exemption of this category of personal property from taxation will reduce

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Newly Enacted State Budget Provides “Bottom Line” Benefits for Small, Independent Businesses

It normally takes about six months for state lawmakers to reach consensus on a new two-year state budget.

This time around it took an extra few months.

Missed deadlines and delays received plenty of media coverage and criticism from Editorial Boards, but we are less concerned with process and more focused on the product. From our perspective, lawmakers used the additional time wisely and improved upon the original two-year budget plan put forward by Governor Walker.

The 2017-2019 state budget includes many of our lobbying priorities. Outlined below is a brief summary of the provisions within 2017 Wisconsin Act 59 (Act 59) that will provide bottom-line benefits to WIB members and small businesses in general.

Property Tax Relief

Wisconsin’s property tax burden is among the highest in the country and well above the national average. While the partial repeal of the personal property tax will reduce this burden on some small, independent businesses, there are two other property tax relief measures included in Act 59 that will benefit nearly all members. They are:

- Elimination of the Forestry Mill Tax – the only property tax levied by the State of Wisconsin – beginning with property taxes levied in 2017, and payable in 2018. Ending this tax will reduce statewide property tax collections by roughly \$90 million annually; and
- Increased state funding (\$87 million annually) for the School Levy Tax Credit beginning with property taxes levied in 2017, and payable in 2018. This credit is applied to every taxable property in Wisconsin and the amount of the credit is based on the property's assessed value as a percentage of the municipality's total assessed value.

Income Tax Relief

Wisconsin is one of six states with an Alternative Minimum Tax (AMT). State lawmakers federalized Wisconsin’s AMT beginning in tax year 2017 thereby dramatically reducing the number of state taxpayers subject to the AMT.

Under Act 59, the state AMT is repealed for taxable years beginning after December 31, 2018.

Sales Tax Code Simplification

Wisconsin construction sales tax law is complicated and confusing. In 2013, state lawmakers addressed part of the problem by creating a state sales and use tax exemption for property, items and services sold by a contractor as part of a lump sum contract if the total sales price attributable to the taxable items is less than 10% of the total contract price.

Act 59 expands the state sales and use tax exemption for lump sum contracts to apply to all construction contracts and to subcontractors. These tax code changes apply to contracts entered into or extended, modified, or renewed after January 1, 2018.

Expand Rural Broadband Service

For WIB, universal broadband access throughout Wisconsin is a long-term lobbying objective.

Act 59 helps us reach that goal sooner by allocating an additional \$15.5 million in state funding for the Broadband Expansion Grant (BEX) program. BEX grants provide reimbursement for equipment and construction expenses incurred to extend or improve broadband service to underserved areas of Wisconsin.



Brian Dake is the Legislative Director for WIB. With nearly 15 years in the Wisconsin State Assembly as a legislative aide, Brian has a broad understanding of the legislative process and how state government operates.

WORKER'S COMPENSATION...

It's Time to Get Medical Costs under Control

Wisconsin's Worker's Compensation program is an "outlier" when it comes to meaningful medical cost containment for the treatment of injured workers.

Forty-four states have a medical fee schedule that limits the amount billed for worker's compensation medical treatment. The rest have a form of employer directed care, allowing employers to negotiate with health care providers on cost. Many states have both. Wisconsin has neither.

Small, independent businesses suffer the consequences.

Medical costs for the treatment of injured workers are driving up the cost of worker's compensation insurance. To keep premiums in check, Wisconsin employers have made significant investments in workplace safety and training. These investments are producing the desired result – fewer work-related injuries – which should translate into cost-saving to employers on their worker's compensation costs. It's not. The following statistics bear that out:

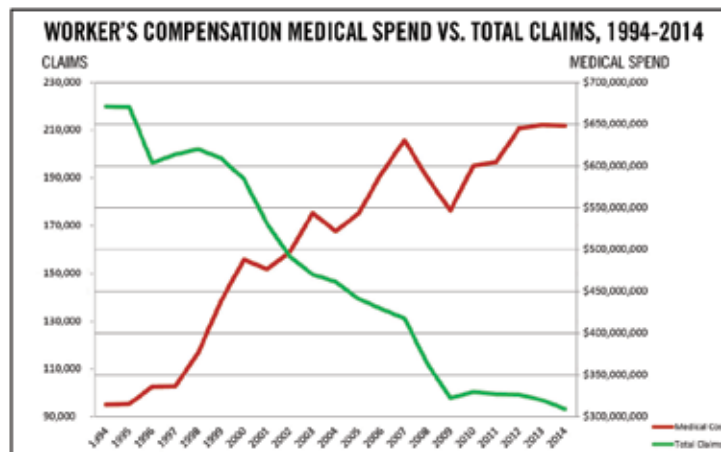
- The overall amount spent on worker's compensation medical bills more than doubled since 1994, from \$314 million to \$648 million in 2014;
- Wisconsin had 219,975 annual workplace injuries in 1994. By 2014, the number of injuries dropped to 93,228 – a 58% reduction; and
- During this 20-year period, the net overall premium rate change for worker's compensation insurance in Wisconsin was 0.65%.

If medical costs were held in check, safety dividends should be larger and worker's compensation costs

should go down. Moreover, we believe the best way to control medical costs is through a medical fee schedule. Thankfully, the private sector experts who advise state lawmakers on the development and administration of Wisconsin Worker's Compensation program have reached the same conclusion.

The Worker's Compensation Advisory Council (WCAC) has unanimously recommended that the State of Wisconsin establish a medical fee schedule by January

1, 2019 which approximates the average negotiated price of group health insurance. The medical fee schedule would include an increase of at least 2.5% but no higher than 10% above the average negotiated group health price to reimburse medical providers for administrative expenses associated with worker's compensation claims.



The WCAC recommendation is just that, a recommendation. It will be up to Governor Walker and the Wisconsin State Legislature to make the final decision.

The WCAC proposal will be available for legislative consideration on or around October 15. Shortly thereafter, we will be meeting with state lawmakers to ask for their support of the WCAC-approved medical fee schedule.

To enhance our advocacy efforts, WIB has joined a newly-formed group – the Worker's Compensation Employers Coalition. Our Coalition is united in the belief that the WCAC-approved fee schedule is a tested reform that almost every other state effectively uses to keep worker's compensation medical costs under control.



Legal Line

Worker's Compensation: Not So Simple

In my last newsletter article I discussed the [Operton](#) decision by the Wisconsin Supreme Court regarding the “substantial fault” standard for denying unemployment benefits to a terminated employee. In keeping with the theme of Supreme Court decisions relating to labor regulations, this article will briefly examine the latest decision on workers compensation, [Flug v. Labor and Industry Review Commission](#)¹ decided on June 30, 2017.

Questions often arise concerning the relationship between a workplace injury and pre-existing non-workplace condition. In the [Flug](#) case, the Supreme Court ventured into those murky waters deciding issues on a 4-3 vote with vigorous dissents by Chief Justice Roggensack and Justices Ann Walsh Bradley and Shirley Abrahamson. Both sides claimed to be interpreting the plain language of the statute, yet they arrived at conclusions 180 degrees apart.

FACTS

In 2013, Tracie Flug was a store supervisor at Wal-Mart and while she was working, suffered a soft-tissue strain causing severe pain in her upper back and shoulder area. There was no dispute that this injury was work related. In x-rays taken, her doctors also found degenerative disc disease in her spine which was admittedly not work related and her doctors did not connect this condition to the work related injury.

After several months of treatment, her back and shoulder pain did not go away and her doctor recommended a fusion surgery to correct her soft tissue strain. On June 4, 2013, Ms. Flug had her surgery believing she was being treated for her work-related injury. By July 17, 2013 her pain was gone and she was

back at work, although she had a “limited permanent partial disability” as a result of the fusion surgery.

After the surgery, Wal-Mart requested review by an independent medical specialist who opined that Ms. Flug had two separate and distinct medical issues not connected to each other. He further opined that her surgery was treatment of the non-work related disc degeneration and not her work related injury.

Based on this assessment, Wal-Mart refused to pay for any medical treatment after May 9, 2013 nor disability benefits after June 22, 2013. In other words, Wal-Mart would not pay for her surgery as it determined it was for a non-work related condition.²

STATUTORY ISSUE

The issue in the case was interpretation of Wis. Stats., §102.42(1m) which provides:

Liability for unnecessary treatment. If an employee

¹ Case No. 2015AP1989

² This is a very short summary of some very extensive facts.

“...an employee is not eligible for benefits under Wis. Stats. §102.42(1m) if the disability-causing treatment was directed at treating something other than the employee’s compensable injury.”

Flug v. Labor and Industry Review Commission

who has sustained a compensable injury undertakes in good faith invasive treatment that is generally medically acceptable, but that is unnecessary, the employer shall pay disability indemnity for all disability incurred as a result of that treatment

The statute clearly provides that under some circumstances, employers may be liable for unnecessary surgery and disabilities resulting therefrom.

Ms. Flug appealed the denial by Wal-Mart and after a hearing, the Administrative Law judge (“ALJ”) determined that there was “legitimate doubt” as to compensability of the surgery and disability based on the Wal-Mart doctor’s testimony that the surgery treated only the non-work related condition. The ALJ dismissed the appeal. Ms. Flug then appealed to the Labor and Industry Review Commission (“LIRC”) which upheld the dismissal based on the ALJ’s findings. LIRC’s decision was affirmed by the Chippewa County Circuit Court.

The Wisconsin Court of Appeals then reversed the Circuit Court finding that under the statute at issue, the employee only need have a good faith belief that the treatment was related to the workplace injury.

THE WISCONSIN SUPREME COURT

In a 30 page decision written by Justice Daniel Kelly, the four majority justices reversed the Court of Appeals and denied compensation to Ms. Flug. The majority parsed the words of §102.42(1) and the decision reads like a grammar text as the Court attempted to establish the clear meaning of the statutory language. In the end, the majority concluded that, “...an employee is not eligible for benefits under Wis. Stats. §102.42(1m) if the disability-causing treatment was directed at treating something other than the employee’s compensable injury.”

Even though, based on her doctor’s advice, Ms. Flug believed that the surgery was treatment for her work-related injury, she was not covered by worker’s compensation because the surgery addressed the non-work related condition. Surgery is not “unnecessary” under the statute unless it addresses the compensable injury.

In two strongly worded dissents written by Justices Rogensack and Bradley (joined by Justice Abrahamson), the minority sharply criticized the majority for ignoring the employee’s “good faith” under the statute. The minority dissents also looked at the clear meaning of the statutory language and believed that the determinative factor was whether the employee believed in good faith that treatment was for the compensable injury.

CONCLUSION

Once again, we have demonstrated that what seems simple is not. Different people draw different conclusions as to what the “clear meaning” of language is. Unfortunately, conflicts like this leave little guidance to employers in working with day to day situations. When dealing with pre-existing conditions and workers compensation, make sure you are getting good legal guidance.

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Gary Antoniewicz is an attorney with the Madison-based law firm Boardman & Clark LLP. Gary practices business and dealership law. For over 30 years, Gary has provided legal advice and counsel to small and family-held businesses throughout Wisconsin.

Changes Coming to Wisconsin's Health Exchange Marketplace

Health Insurance open enrollment for the Wisconsin individual exchanges begins on November 1, but there will be fewer options to choose from. Anthem, Molina and Health Tradition Health Plans have announced that they will not be offering health insurance plans through the health care exchange for 2018.

Federal regulations under the Affordable Care Act (ACA) specify that a full market exit triggers a five-year lockout from the state's individual market. Thus, these decisions are a long-term blow to Wisconsin individuals and businesses that rely on the exchange plans.

Depending on where you live in Wisconsin there might be only one individual health carrier that you can choose in the exchange. For example in Brown County the only exchange carrier, as of now, will be Common Ground Healthcare Cooperative, and their filed increase will be around 20.3 percent. Every county in Wisconsin will have at least one carrier option, however.

The unknown and unstable individual market is forcing business owners to look at other options, including offering group health to their employees. We are receiving many questions from business owners who are trying to grasp what offering group health insurance for their employees will entail.

- What are the per employee monthly premiums and coverage for group health?
- How many employees do I need to sign up?
- What are the start-up costs to setting up a group?
- Where can employees go to the doctor?
- Is there a lot of administration work on my part to set this up?
- Will my employees lose Badger Care or other government assistance if I offer this?
- How much does the employer have to pay towards the premium?

Those are all questions that need to be answered. Many times employers believe that offering benefits is extremely complicated and expensive, and will strap them into something they can't get out of. That is not the case. There are positives and negatives to both group and individual plans and meeting with an agent can help you figure that out.

There are some solutions that groups and individuals can choose to help combat the rising cost of health care. We are seeing a large movement to group plans in the self-insured arena or level-funding plans for businesses. Health carriers put protections in place for smaller companies to explore these routes, even with

as few as only two on the health plan. The difference between self-insured or level-funding options compared to traditional group options is that employers are able to get better rates if their employees are healthy. Carriers are providing significant cost reductions

when quoting by screening employer groups. Those that qualify don't have to comply with the "Adjusted Community Rating" that the ACA forced traditional group carriers to do.

Self-insured and level-funding plans are overseen by ERISA and not by all the laws and mandates of ACA. Level-funding will probably be a better route for most WIB members because its niche is companies with under 100 employees. Companies don't have to pay for claims in addition to their monthly premiums to the carriers; claims come out of the monthly premiums. If there is low claims utilization the company actually receives whatever is left in the "claims fund." If there is high utilization, the business pays its monthly premium as contracted. So despite what you may have heard in the market, groups that are healthier can get better rates. There are positives and negatives, but it is an option worth exploring come renewal time.

COMMON DIFFERENCES BETWEEN HEALTH PLANS

	<u>GROUP</u>	<u>INDIVIDUAL</u>
NETWORK OF PROVIDERS:	Many providers	Very limited network
AVERAGE INCREASES NOW:	7-13%	18-25%
TAX DEDUCTIBILITY:	Yes, you can deduct	No, unless in a QSEHRA
# OF CARRIER OPTIONS	10+ options	1-2
# OF PLANS YOU CAN OFFER:	Up to 3-4 choices	Employee chooses plan

State Lawmakers Fail to Enact a Long-Term Transportation Funding Plan

Since 2013, WIB has been lobbying state lawmakers to adopt a long-term transportation funding plan consistent with the following principles:

- Align transportation project priorities with predictable funding sources;
- Full cost transparency for state transportation projects;
- Improve road and bridge conditions; and
- Reduce construction delays.

Once again, our advocacy efforts fell short. The 2017-2019 state transportation funding plan is, at best, a short-term fix.

Needed improvements to the network of state roads which transport the majority of commercial freight in and out of Wisconsin are funded, in part, with \$402 million in new borrowing. Transportation-related debt service costs are projected to exceed 20 cents on the dollar. The only new sources of revenue to pay for state and local transportation projects are a \$75 fee on hybrid-electric vehicles and a \$100 fee on electric vehicles. These new vehicle registration fees go into effect on January 1, 2018 and are projected to generate \$8.4 million annually.

Local road conditions are likely to improve over the next two years because of a one-time funding increase (\$57 million) in state aid to counties, cities, villages and towns. However, a reduction in funding for state highway rehabilitation may lead to further deterioration of Wisconsin's network of interstate and state highways.

Under the new two-year transportation funding plan, more road construction projects throughout the state will be delayed. The affected projects and the revised timeline for completion of those projects are not yet known. What is known is that delayed projects lead to much higher costs in the long run.

Thankfully, state lawmakers were able to reach consensus on a package of reforms to the processes used by the Wisconsin Department of Transportation to engineer, construct and maintain state highways. We believe these changes in law will produce cost-savings. Only time will tell how much money will be saved.

Enactment of an adequate, equitable and sustainable long-term state transportation funding plan remains on our lobbying "to do" list and we continue to make our case to state lawmakers.

Wisconsin's Health Exchange Marketplace *continued from page 7*

For individuals looking for creative options that are not eligible for a group health plan, we are seeing a lot of people moving to "Christian Care" individual plans. These get the individual out of the ACA individual mandate, provide very good coverage, price and networks, but are not actual insurance policies. Christian Care plans is a program in which its members share in the costs of healthcare with other Christians, and they aren't required to accept everyone into their program.

You must be a Christian, can't smoke, and they may impose pre-existing limitations. We are seeing rates at half the cost of ACA individual plans and with broader networks of providers. However, these are not licensed and admitted insurance policies, they are programs for the sharing of medical claims. These are all things that

you will know when talking with a licensed advisor that offers them.

Self-Insurance, Level-funding, and Christian Care plans are options that have been around for years, but the ACA rising rates have really fueled their growth. It's probably time to explore all the options available to you as a business and personal consumer.



Tony Goebel, LUTCF, is the Founder/CEO of 5G Benefits LLC. WIB partners with 5G to provide information and advice to employers on navigating the health insurance market. If you need advice or assistance on health insurance, please call the WIB toll-free hotline at 1-800-362-9644.

Personal Property Tax Partial Repeal *(continued from page 1)*

personal property taxes statewide by about \$75 million per year.

WIB has been lobbying state lawmakers to end this antiquated and unfair tax on small, independent businesses for the last three years. Our persistence and perseverance have been rewarded, but there is more work ahead of us. Full repeal of the personal property tax as soon as possible remains at the top of our legislative "to do" list.

This legislative victory would not have happened without the help of WIB members. To those members who came to the State Capitol

earlier this year to testify in support of legislation to repeal the personal property tax as well as those members who signed our petition calling upon state lawmakers to eliminate this tax, we extend to you our thanks!

We also extend our appreciation to the group of state legislators who have been leading the charge to eliminate the personal property tax – State Senators Duey Stroebel (R-Saukville) and Howard Marklein (R-Spring Green) and State Representatives Bob Kulp (R-Stratford) and Dan Knodl (R-Germantown). We will continue



to work closely with these lawmakers to end this tax once and for all.

The DOR will be revising the Statement of Personal Property to reflect this new exemption. In addition, the DOR will be putting together guidelines for assessors and personal property owners that should be completed before the end of the year. In turn, we will share that information with you. In the interim, we encourage members to review their 2017 Statement of Personal Property and consult with their accountant and/or tax advisor.

Wisconsin Independent Businesses...Helping you where you need it.

*If you have questions about these issues or any workplace problems, call the **WIB toll-free member HOTLINE at 800-362-9644***



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