

WORKMAN'S COMPENSATION

This legal update will focus on workers compensation. While we all hope our employees never get injured, employers should be aware of the following holdings.

1. A trip to a doctor can be incidental to employment according to the Court of Appeals in *American Mfr. Mut. Ins. Co. v. Hernandez*, 252 Wis. 2d 155, 642 N.W.2d 584 (Ct. App. 2002). In this case, Hernandez, a Walgreen's employee, suffered injuries which were the result of an automobile accident that occurred while she was en route to her physician's office for a final exam relating to an earlier undisputed work injury. The court thus held that at the time of the accident, this employee was performing a service growing out and incidental to her employment pursuant to sec. 102.03(1)(c), Wis. Stats. Thus, this accident causing additional injury "arose out of her employment" at Walgreen's pursuant to sec. 102.03(1)(e), Wis. Stats.
2. An Employer's self help can be bad faith. In *Beverly Enter. Inc. v. Wis. Labor and Industry Review Comm'n.*, 250 Wis. 2d 246, 640 N.W.2d 518 (Ct. App. 2001), LIRC ordered an employer to pay \$31,903 to the employee for wrongful refusal to rehire. This order was never modified or reversed. However, the employer unilaterally withheld from this amount \$10,097.30 for taxes that was not authorized by LIRC. As a result, the Court of Appeals ordered this employer to pay to the employee an additional \$10,097.30. Additionally, the employer was also subjected to the applicable bad faith penalty because it did not seek a modification allowing it to withhold money for taxes, or seek a clarification. Rule to the wise: ask for an explanation before you act on your own when it comes to LIRC.
3. A statute of limitations runs from the death, not the injury. The Wisconsin Court of Appeals held in *Int'l Paper Co. v. Labor and Industry Review Commission*, 248 Wis. 2d 348, 635 N.W.2d 823 (Ct. App. 2001), that the 12 year statute of limitations for death benefits begins to run when the injured employee dies, not from the date of the injury.