



STATE OF WASHINGTON
Department of Labor and Industries

Retrospective Rating Program
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www.retro.Lni.wa.gov • retro@Lni.wa.gov

January 9, 2014

Subject: Petition for Rulemaking, WAC 296-17B

Dear Retro Stakeholder:

The Department of Labor and Industries is considering changes to the current Retrospective Rating rules.

Two *Petitions for Rulemaking* were received from members of the Retro Advisory Committee (RAC). One petition requested revision to the current rules for Individual Retro participants. The other addresses Retro enrollment requirements for businesses under common majority ownership.

In addition to the two petitions, based on review of the first adjustment of the 2011 coverage year, the department identified a need to modify the retro adjustment calculations and the factors used within the calculations to ensure the equity of the distribution of retro refunds based on individual plan choices.

We will work with the RAC and others in the Retro community to identify the next steps moving forward. Please review the *Individual Retro Requirements*, *Common Ownership* and *Distribution of Refunds Based on Plan Choices and PAF* documents that provide more detailed information regarding these rule proposals [attached].

We have planned two meetings to discuss the proposed changes, and we would like to invite you to attend in person or teleconference. The meeting specifics are listed below. These meetings will be open forums where the department will answer any question you have and seek your input. Please contact us at retro@Lni.wa.gov to let us know which meeting you plan to attend. Information for attending by (*toll-free*) teleconference is listed below.

	Meeting 1	Meeting 2
<i>Date and Time</i>	10:00 AM, Monday, January 27, 2014	10:00 AM, Friday, January 31, 2014
<i>Location</i>	L&I field office, Room #TRN-1 12806 Gateway Dr S, Tukwila, WA	L&I headquarters building, Room #S117 7273 Linderson Way SW, Tumwater, WA
<i>Teleconference</i>	1-866-499-3402 (meeting ID № 5221575487)	1-866-499-3402 (meeting ID № 5221575487)

We look forward to your participation.

Sincerely,

Tim Smolen
Program Manager
for Retrospective Rating
360-902-4835

Attachment(s)

Summary Statement – Individual Retro Requirements

Labor & Industries (L&I) received two petitions from the Retro Advisory Committee (RAC) proposing rule changes related to individual enrollment and common ownership. The intent of this document is to summarize the petition regarding individual enrollment. A summary of the five proposed rule changes is provided below:

1. **Minimum requirement of four years as Washington employer**
2. **Increased minimum standard premium**
3. **Demonstrate an acceptable workplace safety plan**
4. **Have an acceptable plan for cooperation with the department's claim management**
5. **Establish probation period for individual enrollment**

1. Minimum requirement of four years as Washington employer - WAC-296-17B-100

Current Rule Language

Current rules do not require that an employer be registered with and paying premiums to the department for a minimum length of time prior to applying for individual enrollment.

Proposed Rule Language

- (1) We will enroll a qualified employer who applies for enrollment for individual retrospective rating. To qualify, an employer must:
- (b) have been registered with and paying premiums to the department for at least four years prior to making application to enroll in an individual retrospective rating plan;

Scope

- There are a total of 175 employers enrolled individually for 2013.
- Of these 175 employers, six employers (representing \$1.2M in standard premium) have been in business for less than four years and will be affected by this proposed rule change.

Impact

- Verifying dates for account activation and initial premium reporting to L&I will add additional time to the quarterly enrollment process.
- RCW 51.18.010(2) requires that L&I adopt rules for Retro to encourage broad participation by qualified employers and group sponsors. This requirement will limit Retro participation by excluding newly established employers.

Preliminary Department Perspective

- There is no evidence to support that enrolling new businesses has a negative impact on the overall performance of Retro.
- L&I will universally apply this requirement to employers entering groups as well as to employers enrolling individually.
- Employers enrolled in Retro prior to the effective date of these rules will not be subject to this requirement.

2. Increased minimum standard premium - WAC 296-17B-100(b)

Current Rule Language

- (1) We will enroll a qualified employer who applies for enrollment for individual retrospective rating. To qualify, an employer must:
- (b) Have paid standard premiums at least equivalent to the minimum premium listed in size group 1, Table 1, WAC 296-17B-900, in the four calendar quarters prior to applying for enrollment;

Proposed Rule Language

- (1) We will enroll a qualified employer who applies for enrollment for individual retrospective rating. To qualify, an employer must:
- ~~(b)~~ (c) Have paid standard premiums at least equivalent to twenty percent of the minimum standard premium required of a new group

Scope

- The minimum standard premium for an employer to enroll individually was \$5,690 for 2013 and is \$5,900 for 2014.
- Currently 20% of the minimum standard premium required for a new group is \$300,000. Under this proposal, employers enrolling individually will need to pay \$300,000 in standard premium in the four quarters preceding their enrollment.
- Of the 175 (\$75.2M standard premium) individually enrolled employers, 109 pay less than \$300,000 in standard premium; representing 62% of all individual participants with \$12.2M in standard premium which is 16% of all standard premium paid by individuals.
- Standard premium currently paid by individual participant's ranges from \$6,554 to \$9.7M.

Impact

- Under this proposal, 109 currently enrolled employers will not be allowed to enroll individually in future coverage periods.
- Implementing this proposal will require additional resources, including system modifications and staff. Implementation will also add additional time to the quarterly enrollment process.
- RCW 51.18.010(2) requires that L&I adopt rules for Retro to encourage broad participation by qualified employers and group sponsors. This requirement will limit Retro participation excluding those employers who pay less than \$300,000 in annual standard premium.

Preliminary Department Perspective

- Collectively, individual accounts are contributing to positive retro returns.
- Employers enrolled in Retro prior to the effective date of these rules will not be subject to the minimum standard premium requirement.

3. Demonstrate an acceptable workplace safety plan - WAC 296-17B-100

Current Rule Language

Current Retro rules do not require that an employer enrolled in Retro as an individual demonstrate an acceptable workplace safety plan.

Proposed Rule Language

(1) We will enroll a qualified employer who applies for enrollment for individual retrospective rating. To qualify, an employer must:

(e) Demonstrates an acceptable workplace safety and accident prevention plan;

Scope

- This requirement will apply to the 175 current individually enrolled employers, and any additional employers applying for individual enrolment in the future.

Impact

- All individually enrolled employers will need to demonstrate an acceptable workplace safety and accident prevention plan when enrolling in Retro.
- Retro will have to develop criteria regarding what constitutes demonstration of an acceptable workplace safety and accident prevention plan.
- Verifying demonstration of an acceptable workplace safety plan for every employer enrolling individually will add additional time to the quarterly enrollment process.
- Retro will require further resources to enforce this proposed requirement.

Preliminary Department Perspective

- Retro has expectations of safety programming and performance for employers enrolled individually and these expectations are different than the expectations of safety programming and performance for groups.
- L&I acknowledges that groups have a fiduciary responsibility to their members. Group enrollment implies that the sponsoring organization offers accident prevention, loss control, claims management and return to work services for members in exchange for fees. WAC 296-17B-220 (3) and (7) are written to ensure that enrollment in a retro group will improve safety for all members. The group plan for retro does not replace the DOSH requirements for every employer.
- WAC 296-800-140, administered by the Division of Occupational Safety & Health (DOSH), requires every business to establish, supervise and enforce an accident prevention plan that is effective in practice.
- Requiring employers to demonstrate an acceptable workplace safety and accident prevention program for retro enrollment creates additional work, and may lead to confusion and duplication of efforts as the standards for retro enrollment may not be consistent with the standards enforced by the Division of Occupational Safety and Health (DOSH).

4. Have an acceptable plan for cooperation with the department's claim management - WAC 296-17B-100

Current Rule Language

Current rules do not require that an individually enrolled employer have an acceptable plan for cooperation with the department's claims management activities.

Proposed Rule Language

(1) We will enroll a qualified employer who applies for enrollment for individual retrospective rating. To qualify, an employer must:

(f) Have an acceptable plan for cooperating with the department's claims management activities.

Scope

- This requirement will apply to the 175 current individually enrolled employers, and any additional employers applying for individual enrollment in the future.

Impact

- Retro will have to develop criteria regarding what constitutes an acceptable plan for cooperation with the L&I's claims management activities for individually enrolled employers.
- Verifying demonstration of an acceptable plan for cooperating with L&I's claims management activities will add additional time to the quarterly enrollment process.
- Retro will require additional resources to enforce this proposed requirement.

Preliminary Department Perspective

- L&I acknowledges that groups have a fiduciary responsibility to their members. Group enrollment implies that the sponsoring organization offers accident prevention, loss control, claims management and return to work services for members in exchange for fees.
- WAC 296-17B-220(4) was written to ensure that when an employer chooses to enroll in an association sponsored retro group, claim management and return to work assistance will be provided to ensure the success of both the individual member accounts as well as the group.
- Success in the Retro program incentivizes safety and loss control, claims management and return to work best practices.

5. Establish probation period for individual enrollment - WAC 296-17B-730

Current Rule Language

Current rules do not require a probation period for individual enrollees that have received a net assessment for two consecutive coverage periods.

Proposed Rule Language

If you as a sponsored group or an individual enrollment as specified in WAC 296-17B-100 receive a net assessment for two consecutive coverage periods, you will be placed on probationary status. We will review your workplace safety and accident prevention plan and your methods of cooperation with the department's claims management activities, and contact you to discuss ways of improving your performance. If you receive a net assessment in the following coverage period, you will be denied future enrollment, and your sponsoring organization will not be allowed to sponsor another group in the same industry category or enroll in an individual enrollment for the five years following the third coverage period with a net assessment.

Scope

- Since 2006, 22 individually enrolled employers (representing \$39.3M) have had three consecutive net assessments (\$5.9M).
- Of these 22 employers, only one individual continues to be enrolled.
- Since 2005, three groups (representing \$15.2M) have been subject to this probationary rule and are, consequently, no longer enrolled in Retro. Their total assessment was \$1.4M.

Impact

- Retro staff currently offer and conduct annual re-enrollment consultations with individuals that include discussions on the viability of continued Retro participation.
- Additional resources including system modifications and staff time will be required to implement this proposal.

Preliminary Department Perspective

- Collectively, individual accounts are contributing to positive retro returns.
- The current rule applies to group enrollment to ensure safeguards around the assumed liability groups have towards their members; whereas, individually enrolled employers assume sole liability for their performance.
- This requirement will apply prospectively to any employer applying for individual enrollment after July 1, 2014.

Closing

Labor & Industries welcomes your feedback and suggestions regarding these proposed rule changes. Two public stakeholder meetings have been scheduled for you to share your opinions and to ask questions. You may also submit your written feedback to retro@Lni.wa.gov.

For specific dates and times of the public stakeholder meetings please go to the Retro website at www.retro.Lni.wa.gov or refer to the cover letter that accompanied this document.

Summary Statement – Common Ownership

Labor & Industries (L&I) received two petitions from the Retro Advisory Committee (RAC) proposing rule changes related to individual enrollment and common ownership. The intent of this document is to summarize the petition regarding common ownership. A summary of the petition’s proposed rule changes is provided below:

1. **Common ownership**
2. **Prohibited conduct**

1. Common ownership - WAC 296-17B-770

Current Rule Language

An employer that shares common ownership with one or more other employers cannot enroll in retrospective rating unless all employers sharing common ownership that are within the same industry category also enroll. Employers sharing common ownership can enroll individually or as members of a sponsored group. Employers sharing common ownership that are enrolled individually can choose to be rated separately or together.

Employers share common ownership when:

- (1) One or more owners, directly or indirectly, own a majority interest in both employers; or
- (2) One employer, directly or indirectly, owns a majority interest in another employer.

Proposed Rule Language

When the owner or owners of one business also own an additional business or businesses or they own a majority interest in an additional business or businesses, the owner or owners of the commonly owned businesses can elect to include all commonly owned businesses in retrospective rating or just some of them. When the owner or owners of a business desire to enroll some or all of their commonly owned businesses into a retrospective rating group at least one of the businesses they seek to enroll into the retrospective rating group must fall within the business and industry category of the group. The retrospective rating group sponsor can then decide which if any of the businesses they wish to allow to enroll in their group. Businesses that share common ownership and who are enrolled in an individual enrollment can choose to have their enrolled businesses rated separately or together.

A business is deemed to be commonly owned when:

- 1) One or more owners, directly or indirectly, own a majority interest in the businesses; or
- 2) One business directly or indirectly, owns a majority interest in another business.

For purposes of this rule the phrase “majority interest” shall have the same meaning as it is defined in WAC 296-17-87301.

2. Prohibited conduct - WAC 296-17B-720

Current Rule Language

(1) Employers and group sponsors must not engage in claims suppression as defined in RCW [51.28.010\(4\)](#).

(2) Employers and group sponsors must not pay medical service providers for medical services related to an industrial injury or occupational disease. Payment of monthly direct fees made on behalf of employees to qualifying direct primary care service providers as permitted by RCW [48.150.050](#) does not disqualify an employer or group sponsor from participation in the retrospective rating program.

(3) Unless disclosed to the member at the time of enrollment, group sponsors must not require members to pay dues, fees, or continue membership in the retrospective rating program beyond the last date of the coverage year in order to receive their share of refunds, if any.

Proposed Rule Language

The proposal is to add requirement #4 to the current rule, and to modify the wording below. Underlining indicates proposed new language and strikethrough indicates removal of current language:

(4)When an owner or owners have multiple industrial insurance accounts or subaccounts with the department and they have elected to have one or more of these commonly owned businesses enrolled in retrospective rating they must not engage in any activity that artificially manipulates the retrospective rating calculation, such as inappropriately reporting most of the company's work hours into the account participating in retrospective rating and some or all of the claims into the non-enrolled account.

If we determine that you have violated any of these provisions, we will issue you an appealable order outlining the alleged infraction(s). The order will contain your appeal rights and will become final and binding sixty days from the date the decision and order is communicated to you unless you appeal the decision. If you do not appeal our decision and it becomes a final decision or if, on appeal, the board enters a final ruling affirming our decision, we will remove you from further participation in retrospective rating effective the date the order became final or the board issued its ruling. You will be barred from further participation in retrospective rating for a period of three plan years. You will remain liable for any additional premium assessments related to your participation in retrospective rating for any plan year in which you were enrolled that has not had its final adjustment and you will forfeit all refunds that have not been distributed regardless of plan year where the infraction occurred. If a retrospective rating group encourages or promotes any of the prohibited activities referenced above the group will have the same appeal rights and be subject to the same penalties.

Scope

The proposed changes to common ownership and prohibited conduct apply to both group and individually enrolled employers.

Impact

Policy

- L&I will have less oversight of an employer potentially manipulating hours versus claims between related accounts.

Administrative

- Retro will have to develop criteria regarding what constitutes prohibited conduct, implement a process to identify prohibited conduct, and develop a process to address the resulting protests and appeals.
- We can expect fluctuation in the volume of accounts enrolling in Retro which may impact the quarterly enrollment process.

Preliminary Department Perspective

Current rule protects against an employer reporting hours worked in an account enrolled in Retro, but reporting claims in a sub-account not enrolled in Retro. Implementing the proposed rule changes may potentially result in employers earning refunds because claims are not being accounted for in the overall retro rating calculation. This manipulation of the calculation may also affect the disparity between Retro and non-Retro performance; impacting the overall amount of retro return.

Implementation of the proposed rule will remove the current safeguard in place to deter this type of dishonest activity and moves L&I from a proactive position to a reactive position related to manipulation of hours vs. claims between accounts. In addition, L&I under current rule, is proactive in identifying which sub-accounts are acceptable to enroll, and implementation of the proposed change will shift responsibility of identification of such accounts to the group or the individual member.

Closing

Labor & Industries welcomes your feedback and suggestions regarding these proposed rule changes. Two public stakeholder meetings have been scheduled for you to share your opinions and to ask questions. You may also submit your written feedback to retro@lni.wa.gov.

For specific dates and times of the public stakeholder meetings please go to the Retro website at www.retro.lni.wa.gov or refer to the cover letter that accompanied this rule filing summary.

Summary Statement – Distribution of Refunds Based on Plan Choices and PAF

Based on review of the first adjustment of the 2011 coverage year, Labor and Industries (L&I) proposes a rule filing to address a situation that we have identified with regards to the calculation of retro adjustments. This summary provides information about L&I's recommendation.

Summary

L&I identified a need to modify the retro adjustment calculations and the factors used within the calculations. In certain situations, participants received refunds even though their loss ratio (claim costs divided by standard premium) was greater than the maximum loss ratio limit they had chosen. Other participants received larger refunds than indicated by their performance relative to their plan selections. An amendment is needed ensure the equity of the distribution of retro refunds based on individual plan choices.

The situations described above were caused by the combination of all of the following scenarios:

- (1) The participants' choice of a premium-based rather than a loss-based plan.
- (2) Their conservative plan choice, risking only 5% of their premium based on the expected Performance Adjustment Factor (PAF) of 1.0000.
- (3) Lower than expected calculated PAFs, based on higher than expected overall Retro performance.
- (4) Current rule that includes multiplying the net insurance charge by the PAF in the premium-based plans.

In order to prevent this particular situation from occurring in the future, L&I believes modifications are needed to one or more of the scenarios listed above. On October 8, 2013, the following proposal to remove the PAF in premium-based plans was presented to the Retro Advisory Committee (RAC) and is outlined in further detail below.

WAC 296-17B-440 Net Insurance Charge

Current Rule Language

- (1) If you choose to have your net insurance charge calculated using your standard premiums, your net insurance charge will be calculated using the following formula:

(Premium insurance charge factor - Premium insurance savings factor) x (Standard premiums) x (Performance adjustment factor)

Proposed Rule Language

- (1) If you choose to have your net insurance charge calculated using your standard premiums, your net insurance charge will be calculated using the following formula:

(Premium insurance charge factor - Premium insurance savings factor) x (Standard premiums) ~~x (Performance adjustment factor)~~

Scope

- Only one full adjustment cycle has been completed for the 2011 coverage period. Only participants enrolled in the July and October 2011 coverage periods have experienced the effects described above. The January and April 2011 coverage periods were not affected due to their relatively higher PAF at the time of their first adjustment.

<i>Coverage year start date - PAF</i>					
Jan. 2011	–	.9394	July 2011	–	.8526
Apr. 2011	–	.9456	Oct. 2011	–	.8527

(The target factor for PAF is 1.0000)

- Because the calculated PAF was approximately 0.85, the net insurance charge was discounted by 15% (1.00 - 0.85).
- Ten individual participants received refunds totaling approximately \$100,000. They would have paid a total of approximately \$230,000 in additional premium assessments had the PAF been at 1.0000.
- There are currently 219 participants enrolled in Retro. Of those, 123 are enrolled in a premium-based plan. Those 123 participants are composed of four groups and 119 employers enrolled individually.

Impact

- This proposal will not change the overall amount of refunds available to participants in the Retro program; however, it will ensure that refunds are distributed equitably among participants in Retro.
- This proposal will eliminate the PAF from the calculation of net insurance charges for premium-based plans. If the PAF remains much lower than 1.0000, the results will be higher charges resulting in lower refunds or increased assessments for these participants.
- L&I anticipates that Retro participants will continue to outperform non-Retro participants going forward. As long as Retro significantly outperforms non-Retro and without amendment, the risk of inequitable distribution of retro refunds will continue.

Closing

L&I is recommending a rule amendment be in place for the July 2014 coverage year and all coverage years beginning thereafter.

L&I is working with an independent actuarial consulting firm to review this proposal as well as other proposals that will eliminate the possibility of this unintended outcome in the future.

Along with seeking the input of the actuarial consulting firm, L&I would also like your feedback and suggestions regarding this rule proposal. Two public stakeholder meetings have been scheduled for you to share your opinions and to ask questions. You may also submit your written feedback to retro@Lni.wa.gov.

For specific dates and times of the public stakeholder meetings please go to the Retro website at www.retro.Lni.wa.gov or refer to the cover letter that accompanied this rule filing summary.