Report to the Legislature:
Workers’ compensation (EHB 2123)

March 2013
Executive Summary

Background
In 2011, the Legislature passed significant reforms to Washington’s workers’ compensation system through Engrossed House Bill (EHB) 2123. In addition to providing new programs to reduce costs and improve outcomes for workers, the legislation directed the Department of Labor and Industries (L&I) to provide a one-time report that describes the agency’s efforts and outcomes and makes recommendations for statutory changes for successfully addressing provider, employer, and worker fraud.

Addressing worker and provider fraud
This report details the Department’s efforts to address worker and provider fraud and the outcomes achieved thus far. As directed by the legislation, this report includes the Department’s efforts to implement the following best practices to address worker and provider fraud:

- **Participate in a national information exchange with other workers' compensation insurers to avoid duplication of claims and benefits.** Insurance Services Office (ISO) ClaimSearch offers the only nationwide database for claims information. The Department contracted with ISO to access the database and received data at the end of 2012. The data was analyzed for potential claim or benefit duplication, fraud, and abuse. Future data transfers will occur on a quarterly basis.

- **Increase public awareness of employer, worker, and provider fraud issues and how to report suspected fraud.** The Department recognizes that outreach and education play a vital role in preventing fraud and has developed a comprehensive communication strategy. Outreach efforts include mass media campaigns, educational audits, and staff presentations throughout the state. The Department accepts tips via a toll free number and also the internet. Since 2008, public tips about fraud have increased by 69 percent.

- **Establish criteria for the periodic review of total permanent disability pension recipients.** After a pension is established, L&I reviews the case based on various inputs such as data matches with other agencies, tips from the public that the pensioner might be working, and information from the pensioner’s annual declaration of entitlement to benefits. The Department continues to evaluate the feasibility of various approaches, such as the criteria used by the Social Security Administration.

- **Identify provider billing patterns to target potentially abusive practices.** The Department now has staff dedicated to analyzing odd billing patterns. In 2012 alone, the Department’s Provider Fraud Detection Unit identified over $1 million in estimated overpayments to be recouped from providers.

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1 EHB 2123, Section 701(2)
**Recommendations for consideration**

The department has several recommendations for statutory changes that would address employer, worker and provider fraud, including:

- Define several terms, including reasonably continuous gainful employment, and booth renter.

- Add “classifications” to the list of employer misrepresentations that can be penalized and clarify wording on penalty payments;

- Strengthen the power to collect on penalties and interest in the case of personal liability; and

- Strengthen prime contractor liability to allow for collection of premiums from a prime contractor when premiums are assessed for work performed by someone hired by a subcontractor.
EHB 2123 Sec. 701.

PART 7. INITIATIVE TO ADDRESS WORKER, EMPLOYER, AND PROVIDER FRAUD

NEW SECTION. Sec. 701. A new section is added to chapter 51.04 RCW to read as follows:

(1) The legislature finds that the department is successfully addressing employer fraud and the underground economy, helping ensure that employers who appropriately report and pay premiums can be competitive. Efforts focus on prevention, education, and enforcement by identifying industries for targeted audits, informing industry members and providing the opportunity for voluntary compliance, and ultimately identifying employers for audit based on proven criteria.

(2) To ensure the appropriate use of workers' compensation funds, the legislature directs the department of labor and industries to continue applying these proven best practices to employer fraud and to apply the same best practices to address instances of worker and provider fraud, including but not limited to:
   (a) Participating in a national information exchange with other workers’ compensation insurers to avoid duplication of claims and benefits;
   (b) Increasing public awareness of employer, worker, and provider fraud issues and how to report suspected fraud;
   (c) Establishing criteria for the periodic review of total permanent disability pension recipients including their level of disability and physical activity to determine whether they can be gainfully employed; and
   (d) Identifying provider billing patterns to target potentially abusive practices.

(3) The provisions of RCW 51.28.070 shall not be a barrier to the department's participation in a national information exchange as required in subsection (2)(a) of this section.

(4) The department's activities must include approaches to prevent, educate, and ensure compliance by providers, employers, and workers. The department shall provide a report to the governor and the appropriate legislative committees by December 1, 2012, that describes the agency's efforts and outcomes and makes recommendations for statutory changes to address barriers for successfully addressing provider, employer, and worker fraud.
Section (2) (a)
National Information Exchange

EHB 2123 directed L&I to participate in a national information exchange with other insurers to identify duplicate claims and benefits, and potentially fraudulent claims. ISO ClaimSearch offers the only nationwide database for claims information and is used by private firms, self-insurers and public insurers. Each year, participating insurers and other organizations submit tens of millions of reports on individual insurance claims. ISO stores those reports in a single database that L&I will use to identify potential cases for further information gathering and/or investigation. Claim reports transmitted to ISO ClaimSearch are processed and matched against millions of other claims in the database. If the system finds a "match" (i.e., a similar claim submitted to the system by another insurance group), a report is returned to help identify claim patterns which may indicate duplicate coverage or suspicious activity.

Participation in the database was delayed for one year due to funding needs. Subscription to ISO is based on a percentage of the premium paid to L&I. Based on that, the annual subscription fee is $250,000 per year which was much higher than early estimates. In 2012 the Legislature provided the necessary funding.

Since that time, L&I has finalized a contract with ISO for accessing and using the database. Our contract with ISO ClaimSearch strictly dictates under what circumstances information can be shared and how it can be used. The system is managed and operated under stringent privacy rules, according to the requirements of federal and state privacy laws, to protect the confidentiality and integrity of the data. L&I is allowed full disclosure of any data regarding our claims that the database may contain.

L&I’s Fraud Detection and Tracking Unit is working with ISO to develop a method for sharing and receiving large data runs. This will allow analysis for indication of potential claim or benefit duplication, fraud and/or abuse. The first exchange of data is planned to occur by the end of 2012. For cases reported by the public as potential fraud or by claim managers for investigation based on the facts of the particular claim, investigators are already using the database to see if there have been multiple claims made on the same injury.

Participating in the national information exchange is part of L&I’s strategic plan. Results will be measured in dollars for avoided inappropriate claim costs. L&I has set the first year target at $1 million in reduced costs from claims matched with other insurers. L&I currently pays out over a billion dollars in medical and disability benefits annually.
Section (2) (b)
Public Awareness of Fraud Issues

Outreach and education play a vital role in preventing fraud. Our outreach strategy uses a variety of communication methods. Each message is targeted at a specific audience.

- Mass media educates and encourages the general public to report fraud.
- Educational audits help new businesses learn the rules for premium reporting and avoid reporting mistakes.
- L&I staff appearances and presentations at trade events are directed at specific stakeholder groups.

Growing public awareness of fraud

Raising awareness about fraud ultimately plays a large role in stopping it.

We want businesses to be successful. To help employers understand and follow reporting rules, we educate them through various outreach efforts. Many compliance issues are simply mistakes or lack of understanding requirements. L&I provides employer outreach such as instructional audits for new employers and contractor training days. Education efforts not only clarify rules and regulations for employers, but also help explain how to report potential workers’ comp fraud.

The public should know what to look out for and how to report fraud. We teach the public how to protect themselves from unregistered contractors and how to keep a watchful eye out for cheaters.
A sentinel keeps a watchful eye out as a guard. We want potential cheaters to know we are watching for them. Greater knowledge of the likelihood of discovery and consequences of being caught deters fraud. This is known as the sentinel effect. We use media exposure on criminal cases as an opportunity to highlight the hazards of cheating the system. Knowing that we are on the lookout also encourages others to report cases where abuse is suspected.

**SuspectFraud.com**

L&I ran a legislatively mandated ad campaign about fraud from January through March 2012 designed to help combat the underground economy. The advertising campaign featured a radio ad and banner ads on several websites. The ads encouraged people to report fraud when they spotted it. Advertisements directed people to visit www.SuspectFraud.com a website developed by the DOR. The site is a one-stop shop for the various types of fraud faced by L&I, DOR and the ESD. On the site, people can learn about fraud as well as how to report it.

The radio promotion aired on 11 stations, providing coverage throughout the state. The ad was based on a similar campaign from 2011 with more current data about L&I’s fraud-fighting efforts. Future ad campaigns will incorporate feedback received from stakeholders.

The campaign also used banner ads displayed on nine news sites for areas throughout Washington. Effectiveness of banner ads is measured when viewers click on the ads and proceed to the advertised website. This is called a click through rate (CTR). Most sites we used experienced average to above average CTR. We will review the performance metrics for future campaigns and focus on the highest performing sites for future banner ads.

**Results**

The advertising campaign drove a growth in website traffic and referrals. Traffic for SuspectFraud.com increased over 50% to an average of 3,000 visits per month. More than 500 visitors used SuspectFraud.com to jump to L&I’s website during this period. The fraud hotline received over 50% more phone calls than during the period prior to the ad campaign.
MEDIA COVERAGE OF FRAUD ISSUES

One way to help prevent fraud is to make sure the public at large knows about our fraud-fighting activities.

L&I works with the media to get this message out. Over the course of the year, media outlets around the state featured stories related to fraud and L&I’s efforts to curb abuse. They highlight our success stories and provide cautionary tales for consumers about the dangers of using unregistered contractors who are part of the underground economy.

This is a list of several of the stories – some generated by our press releases or contacts with the media and others discovered by reporters.

- Albion man faces 30 years in prison for industrial insurance fraud, KLEW, Jan. 6, 2012
- Unlicensed contractors cost you money and time, Tri-City Herald, Dec. 19, 2011
- Ex-South Sound doctor guilty of drug, fraud, income tax charges, The (Tacoma) News Tribune, Nov. 10, 2011
- Man’s history of customer, employee complaints runs deep, KIRO, Oct. 27, 2011
- Underground economy fight takes national stage: Washington L&I partners with Department of Labor to properly classify employees, ptleader.com, Sept. 26, 2011
- Bad contractor locked up for ripping off subcontractors, KING5, May 22, 2012
- Paving scam: “It makes me sick,” KIMATV, May 7, 2012
- What you need to know before hiring a contractor, KING5, March 22, 2012
- Avoid ‘contractor roulette’ as home improvement season heats up, KOMO, March 6, 2012
- Liens put on homes after contractor doesn’t pay suppliers, KING5, March 6, 2012
- Contractor dispute following house fire keeps La Center family living in trailer, KOIN6, Jan. 31, 2012
- State reminds homeowners to check contractors’ credentials in storms’ aftermath, The Issaquah Press, Jan. 29, 2012
- Beware of shoddy, illegal contractors for storm cleanup work, Q13 FOX News, Jan. 25, 2012

Department of Labor & Industries

EHB 2123 Report
SOCIAL MEDIA – NAILED

Fraud Prevention and Compliance launched our blog “Nailed” in August 2010. The blog allows us to engage new audiences and take part in new avenues of communication. Each entry is also featured on the agency twitter account, exposing the blog to a wider audience. The blog has become a valuable tool for increasing public awareness of fraud, covering not only workers’ compensation fraud cases, but also unregistered contractor and underground economy stories.
Section (2) (c)
Pension entitlement (total permanent disability)

The following section of this report describes some of the challenges to addressing issues of pension recipients who are engaged in work or work-type activities, and suggests possible criteria and an approach for periodic review of pension recipients.

Overview

The Industrial Insurance Act defines “permanent total disability” as:

“[the] loss of both legs, or arms or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation.” (RCW 51.08.160)

L&I's highest level adjudicators determine whether a state fund or self-insured injured worker qualifies for total permanent disability pension. They evaluate claim, vocational, and medical information from several parties: the worker's doctor, other medical specialists, and vocational experts.

When a worker is found to be permanently and totally disabled, he or she is entitled to lifetime pension benefits unless it is later shown that the disability has diminished. The pensioner can choose to take an actuarially reduced monthly benefit in order to provide payments to a spouse or registered domestic partner if the injured worker dies first. Benefits may also be payable for children, including disabled adult children. The injured worker’s pension benefits are adjusted for receipt of Social Security disability or Social Security retirement payments. Other retirement benefits such as those from an employer or union are not offset.

Pension benefits are paid monthly with annual cost-of-living adjustments. Benefits are suspended upon incarceration, and may also be suspended or terminated upon return to “reasonably continuous gainful employment”.

Annual Declarations

Every pensioner must annually certify their continued entitlement to benefits by submitting a notarized ‘Declaration of Entitlement’ form stating that they have not returned to work, and updating marital and dependent information. Failure to provide the completed form leads to suspension of benefits. Certain types of information provided in the form (or the failure to file a form) can lead to review and investigation of pension entitlement.
Cross-matching
The department regularly cross-matches pensioners with data from the following agencies to identify cases for review and potential investigation:

- **Department of Corrections**: individuals convicted and under sentence, and therefore ineligible to receive ongoing benefits
- **Department of Health**: deceased individuals
- **Department of Employment Security**: individuals reporting current wages
- **Social Security Administration**: individuals who are receiving Social Security benefits for potential benefit adjustment

Periodic Review
In addition to wage data from the Department of Employment Security, L&I receives tips from the community about pensioners who are working or appear to be capable of working. These tips are evaluated and details of the pension case are analyzed to determine if investigation is appropriate. Pension adjudicators may also independently determine that a pension should be reviewed at a future point based on facts specific to the case.

If the situation warrants, the pension adjudicator may request new medical information or an independent medical examination (IME) to determine whether the pensioner's physical restrictions have changed so that they are capable of reasonably continuous gainful employment.

After a pension is established, there is currently no ongoing periodic review (other than cross-matches described above) to determine continuing eligibility based upon levels of disability and physical or work-related activity. In response to the mandate of EHB 2123 that L&I establish criteria for the periodic review of total permanent disability pension recipients including their level of disability and physical activity to determine whether they can be gainfully employed, staff will continue evaluating approaches and their feasibility with the program’s limited resources.

One Model for Continuing Review
Disability pension programs have various approaches to confirm recipients’ continued disability and entitlement to benefits which were not studied for this report. The Social Security Administration’s model is presented here as one example.

The Social Security Administration (SSA) has devoted considerable resources to a “continuing eligibility review” process for Social Security disability benefits. Under their model, cases are separated into three categories:

- Medical improvement expected (MIE)
- Medical improvement possible (MIP) and
Medical improvement not expected (MINE).

Each category has a designated continuing eligibility review window where the entitlement to benefits is re-evaluated. The MIE window is 6 to 18 months, the MIP window is 2-5 years, and the MINE window is 5 to 7 years. At the designated time for review, the recipient’s physician evaluates the individual’s ability to perform work-related activities.

During the review, adjudicators compare the updated medical information against the federal standard of “substantial gainful employment”. Under the federal definition, gainful employment is measured by an income limitation set by the SSA; workers who earn more are considered to be engaged in “gainful employment”. The federal definition also includes part-time work, and work that pays less than the individual’s regular employment, or has less responsibility. Unpaid work is generally not considered gainful, unless the work activity is substantial.

Social Security disability recipients are incentivized to attempt to return to work as the program allows up to nine months of trial work where the recipient retains their eligibility for benefits. The nine months are not necessarily consecutive. The program allows a disabled person who might be hesitant to try going back to work to take steps toward working again without fear of losing benefits if they still are unable to perform meaningful work.

As of November 30, 2012, the department had 21,133 total permanent disability pension recipients receiving ongoing benefits. These include pensioners insured by both L&I (the state fund) and those covered by self-insurers because the department administers all workers’ compensation pensions. The oldest of these cases is a state fund case for an injury that occurred in 1944. Total disability determinations for existing and new cases, recommendations for post-pension medical treatment, survivor benefit decisions, and continued entitlement are managed by a unit of 16 staff that includes workers’ compensation adjudicators and support staff. The unit’s total caseload, including survivor pensions for spouses and other beneficiaries as well as dependent children and students is 30,439 individual files.

To establish a process of “continuing eligibility review” similar to that of the Social Security Administration, the pension program would require additional staff to manage the newly established program. Staff needed would include vocational experts, investigators, occupational nurse consultants, and additional workers’ compensation adjudicators to review prior and current medical and vocational information to make entitlement decisions.

Based only on the age parameters discussed below, the number of pensioners requiring two-year review are estimated at 1,738; the number requiring five-year review is 10,613; and the number requiring a random sampling 8,782. The required number of new staff FTEs would depend on the levels of permanent partial disability or percent of total bodily impairment identified and any other review criteria. Because L&I is responsible under the law for administering pension benefits, it is assumed the agency would include reviews of self-insured cases, with the costs included in the administrative assessments for self-insured employers.
Establish criteria for periodic reviews of pension recipients

To launch a program modeled in part after the SSA approach, Washington’s system would first need to establish periodic review criteria. This could be based on the pensioner’s age, level of permanent partial impairment, and vocational barriers. For example:

- A two-year continuing eligibility review cycle for pensioners under 50 years old with permanent disability of less than a specified percent of total bodily impairment, or who have been granted post-pension medical treatment.
- A five-year review cycle for pension recipients age 50 to 66 with permanent disability of less than a specified percent of total bodily impairment.
- A random sampling of pension recipients age 67 and over.

Review criteria should take into account the pensioner’s vocational barriers that existed at the time the total permanent disability decision was made and whether these barriers have changed. For example, has the injured worker relocated since the initial date of pension to a geographic area with a better labor market? An updated physician’s assessment of physical capacities would also be needed.

Continuing eligibility review would not apply to pension recipients who are statutorily eligible to return to work and maintain their entitlement to full pension benefits. These include injured workers who have lost two major limbs, are paralyzed, or suffer total loss of eyesight.

A continuing eligibility review process would need legislation to ensure pensioners comply with required medical evaluations and vocational assessments or reviews.

“Reasonably Continuous Gainful Employment”

It is challenging for all parties -- L&I staff, pensioners and their representatives, doctors, employers -- to determine what level of employment a pensioner can perform and remain entitled to pension benefits. In part, this is because there is no bright-line standard or definition: the analysis is based on each individual’s wages and employment pattern at the time of injury and their current activity and earnings.

Under Washington law, it is not necessary that a worker be completely incapable of any kind of work to be entitled to a pension. However, they must be incapable of working at or obtaining any reasonably continuous gainful employment. When a pensioner is working, staff must determine whether the work is reasonably continuous gainful employment (or prove that the pensioner is capable of it) in order to stop benefits.

The legal standard of reasonably continuous gainful employment does not have a definition in statute or rule; it is a case-by-case analysis considering the following factors:

**Pattern of Employment** – the adjudicator compares the work pattern of the worker at the time of injury with what he or she is working or can work now. The patterns must be similar. For example, if a worker was injured while working a full-time job,
and is now working and able to work only a part-time job, the employment will not be considered “gainful”.

**Wage** - the worker must be receiving at least minimum wage. Work for less, such as for commission only, is not sufficient to demonstrate “gainful” employment.

**Job Permanence** – the job must not be short-term or sporadic.

As a result, pensioners can be employed and earn wages in numerous ways that allow them to continue to qualify for and receive full pension benefits. Partial pension benefits are not provided under the law.

Below are examples of work activity reported to the department, usually by the pensioner who does not want to risk benefits. The majority of working pensioners perform part-time or seasonally limited work, generally consistent with the medical restrictions resulting from their injury.

1. Driving a car from Seattle to Mt. Vernon once a week, earning $300 dollars a month.
2. Working as a gate guard at car shows during the summer months, earning a total of $300 annually.
3. Earning $920 working part-time from June through September during the blueberry harvest.

Sometimes pensioners report work activity that appears to be gainful or that could be gainful if done on a reasonably continuous basis. These cases are investigated by contacting the worker and reviewing the medical restrictions and other information from the claim. In the following examples, it was determined that the worker could not perform the job on a reasonably continuous basis. As a result, these workers also continued to receive pension benefits.

1. Supervising a bough line full-time for 2.5 months during the Christmas season.
2. Playing in a band 2-4 evenings a month, earning $75-100 each night.
3. Babysitting grandchildren weekly for pay.
4. Making meals, doing laundry, performing personal care services for a disabled family member, for which they are paid $1,500 a month.

Finally, a small number of working pensioners report post-pension earnings that may be equal to or higher than what they earned at their job of injury. However, wages alone do not define gainful employment. Even though these workers sometimes earn more, they are still restricted from returning to their original pattern of work because of their industrial injury, and so continue to be entitled to a pension.

1. Building hand-crafted lawn furniture for sale on Ebay. Earnings vary, depending on how many items can be made and sold during the year.
2. Forming a business that matches home sellers with clients who want to lease with an option to buy. A fee of $3,000 to $5,000 is collected for each successful match. Income is dependent on the number of successful matches.
Section (2) (d)
Targeting Provider Fraud

In October 2010, L&I began a pilot program to identify potential provider billing issues and irregularities that might indicate fraud or abuse. The program used software to detect medical billing anomalies. The pilot ran for the nine-month period of October 2010 through June 2011. During that time, the unit received 240 medical provider referrals and identified almost one million dollars in inappropriate billings. Based on the success of the pilot, the Legislature provided funding to make the pilot changes permanent.

We now have staff dedicated to analyzing odd billing patterns and reviewing leads provided by the public. Examples include billing for more hours than are in a day and “Upcoding” (billing a 15-minute appointment as an hour long). Public tips come from a variety of sources. We receive tips from the internet, other providers and injured workers who are receiving treatment from providers.

Consistent with the pilot outcomes, this year, the Provider Fraud Detection Unit identified over one million dollars in estimated overpayments to be recouped. The unit received and reviewed 233 tips about provider or billing issues. Of those, 12 were identified as potential criminal fraud and referred to the Investigations program. The majority of the tips were referred to internal units at L&I for further review or action.
Section (4) Recommendations

EHB 2123 directed L&I to make recommendations for statutory changes that would address employer, worker and provider fraud. The following recommendations include suggestions that also address pension recipients and work activity, along with clarifying certain laws, providing legal definitions and strengthening L&I’s fraud compliance efforts.

Add “classifications” to the list of employer misrepresentations that can be penalized and clarify wording on penalty payments

Current language in RCW 51.48.020 does not address classification-based misrepresentations. This could prohibit L&I from making penalty assessments against employers who classify workers and pay premiums that don’t properly align with the risk of the work being done. L&I recently lost a motion for summary judgment because the law is not clear. Suggest adding to RCW 51.48.020:

(iii) Payments collected under this subsection must be applied until satisfaction of the obligation in the following order: Premium payments; penalty; and interest.

Strengthen the power to collect on penalties and interest in the case of personal liability

Based on the current statutory construction, a judge determined that required payments must be applied first to premiums. If L&I has collected enough funds to cover the premiums, we cannot assess personal liability to corporate officers for unpaid penalties and interest. Suggest revising RCW 51.48.020 to:

(2) The officer, member, manager, or other person is liable only for premiums, penalties and interest, that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those premiums.

Define “Booth Renter”

RCW 51.48.055 references a separate RCW that no longer exists. This is a “housekeeping” recommendation. Suggest adding:

For purposes of this section, “booth renter” means any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW; and
(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

Strengthen prime contractor liability to allow for collection of premiums from a prime contractor when premiums are assessed for work performed by someone hired by a subcontractor

Current language in RCW 51.12.070 does not bar L&I from collecting premiums from the prime contractor. However, based on precedent and the current language of WAC 296-17314004(7) referencing RCW 51.12.070, a court would likely determine the prime contractor is not responsible for the sub-subcontractor’s premiums. Current status creates a situation where a general contractor could avoid liability by creating a “paper” subcontractor for use in hiring bad-acting sub-subcontractors. In order to avoid lengthy litigation, it is recommended that the RCW be amended to provide express authority. This would require greater accountability from general contractors and combat activities in the underground economy.

Define “Reasonably Continuous Gainful Employment”

Although there is significant reliance on whether an injured worker is capable of “reasonably continuous gainful employment” in determining entitlement to pension benefits, the law does not provide a definition of the term. As a result, it is unclear to all parties how much work activity an injured worker or pensioner can engage in without impacting benefits. On a case-by-case basis, the issue may be decided through litigation, though there is no Washington workers’ compensation precedent-setting case that has defined “reasonably continuous gainful employment”.

RCW 51.08.160 currently defines “permanent total disability” to include cases where the worker cannot perform any work at any gainful occupation. This could be clarified by changing the language to state that the worker be unable to perform any “reasonably continuous gainful employment”, coupled with a separate statutory definition of the term. The definition should address the level of wages, whether the work must be permanent and generally available, and how closely the job or activity must match the worker’s employment at time of injury.

Developing a definition should take into account the elements currently reviewed in Washington cases. These elements include: whether the work pays at least minimum wage; whether the pattern of employment is similar to the pattern at the time of injury; whether the work is permanent and not temporary or sporadic. In addition, a review of approaches used in other jurisdictions and the impact on system costs and on injured workers should be done to inform legislators and stakeholders of potential options.