

## CONCISE EXPLANATORY STATEMENT

Chapter 296-17 WAC General Reporting Rules, Classifications, Audit and Recordkeeping, Rates and Rating system for Washington Workers' Compensation Insurance

The purpose of this rulemaking is to establish industrial insurance premium rates for the year 2007 as required by RCW 51.16.035. The department also proposed to change the manner in which a firm's Experience Modification Factor (EMF) is calculated.

The intended date of Adoption for this rule is December 1, 2006

The intended Effective date for this rule is January 1, 2007

The purpose of this document is to respond to the oral and written comments received through the public comment period and public hearing.

The public comment period for this rulemaking began September 5, 2006 and ended November 14, 2006.

Public Hearings were held:

October 19, 2006 in Yakima, Washington. Four people attended and two testified.

October 20, 2006 in Spokane, Washington. Seven people attended and one testified.

October 23, 2006 in Mt. Vernon, Washington. Seven people attended and four testified.

November 6, 2006 in Tumwater, Washington. Thirty two people attended and nine testified.

November 7, 2006 in Tukwila, Washington. Forty seven people attended and twenty four testified.

Below is a summary of the comments received as part of the official public hearing and comment process and the department response to the comments:

**Comment:** New calculation is no longer an incentive based EMR calculation that rewards companies and their employees for safety regardless of their size.

**Comment:** New calculation will reward average and below average companies who do not commit resources before the fact, and will penalize above average companies that have proactively invested time, money, and resources over the years to improve their own safety and loss experience.

**Comment:** New calculation will effectively eliminate innovative and supportive light duty programs that help monitor injuries and get employees back to work – a concept that is proven to reduce depression and the recurrence of injury.

**Comment:** New calculation will come into effect way too soon, as many contractors have already signed contracts for projects that will be in progress after January 1, 2007. Contractors will have no avenue for recovery and will have to absorb these additional costs.

**Comment:** Suggest that at a minimum the implementation of this rate increase be held off for one year and then phase it in over the next two years so the impact to the higher rate payers will not be so dramatic.

**Comment:** Likewise the new proposal has raised substantive concerns as well. It has been described as counter-intuitive, to say the least, why under the new proposal the experience rating of large firms with good claims histories would increase, while the experience ratings of small firms with poor claims histories would decrease. There are basic philosophical and public policy concerns that underlie a change with that result which have not been sufficiently aired and resolved between the Department's actuarial staff and the business community.

**Comment:** We ask that you delay the implementation of the EMR rate changes. If an adjustment is needed to re-align claim cost impact on premiums, this shift should be made incrementally over time rather than in one step with a short lead time. There should be adequate notice and disclosure of the reasons for the change and the methodology used.

**Comment:** L&I has proposed a reduction of 2% but we would ask that you carefully consider if this reduction is adequate to avoid future volatility in the rates.

**Comment:** Many of our customers when awarding contracts look at EMR rates and trends. When looking at the rates from 2006 to 2007, they will not understand what has happened to us and it will raise concerns. If this is implemented, it should be very clear on the LNI Website that a calculation change was made, and the potential impact to companies under 1.0 (i.e. "The safest companies were hit with the largest increases and there were quite a few that sustained increases that would have had decreases in the past").

**Comment:** It appears that companies with the lowest EMF's are receiving the highest rate changes, when it should be the companies with the highest loss ratio (premium to losses) that are penalized. Companies that have not invested in safety and loss control to the extent that we have are receiving more favorable experience rates than those like us, who make safety a #1 priority every day.

**Comment:** Employee comment: As a result, I am going to have (or could have) more LNI taken out of our check even though we work hard to be safer than the average company in our safety and accident record.

**Comment:** The emphasis on “small companies” shows an overtly socialistic trend that is anything but beneficial “for the common good”. For example in our world of framing, we see way too many “small companies” that skirt around the rules, pay workers under the table, and have little or no regard for safety and under-bid work as well. Registered as sole proprietors, or declaring only one or two workers, these charlatans really ruin things for those of us who play by the rules and dedicate our finances and life energy to safety in the work place. It is not possible to frame a structure in a timely fashion with two workers, let alone a sole proprietor. To see you even suggest a benefit to those at the expense of those who comply without a thorough review of the reality out here on the streets is to truly slap us in the face.

**Comment:** Liability insurance will be impacted and this is significant for our industry since EMR’s are used for measuring risk. This won’t be accurate any longer as the EMR’s won’t reflect the companies own performance nor the companies own real risk.

**Comment:** I realize that in the State of Washington, we operate within a monopoly when it comes to workers compensation insurance and are at the mercy of the state. However, if this change is made final and further adjustments are in the offing, we plan to mobilize forces within our industry to revise Statute 3405320 so that the Department of Labor and Industries will not have such despotic power in determining workers compensation premiums and adjustments. I know that the idea of “third party” insurance has been considered in the past (similar to the State of Oregon) and perhaps it is time to bring that plan to the forefront again. The State of Washington and businesses in this state would benefit from a little “free enterprise” rather than the dogma dictated by a bureaucratic agency like the Department of Labor and Industries.

**Comment:** The current system of Workmans’ Compensation is inadequate and the proposed new calculations will prove to be another additional cost that will hurt businesses in Washington. It is cheaper for our company to keep an injured worker on salary as opposed to having them collect time loss for an injury. For every dollar paid in time loss, it costs Marine View Beverage, Inc. \$3 for increased costs over three years. In the past three years we have had approximately \$440,000 in actual cost of claims (medical and time loss) and we have paid \$1.2 million in premiums – where has the unused \$800,000 plus interest gone? The lack of oversight on monitoring claims (case loads of 220 plus claims per claims manager) allows for considerable abuse and misspending. The flood gates are open for illicit claims and potential for abuse.

**Comment:** If the changes go through there will be no way to effect our EMR’s because, By Gary’s (Gary Van Cleef, L & I) admission, the new EMR will be directly tied to Expected Losses, a number that is set by the state based upon man-hours worked. The only way to achieve a lower EMR will be to report fewer man-hours because again by Gary’s admission, our actual losses will have little or no effect on the final number.

**Response to above comments by department:**

**After careful consideration of the comments, the department believes the best approach for the 2007 year is to assign each employer the lower of two experience modification factors (EMF): one based on the 2006 methodology and credibility for the employer, the other on the proposed changes. This allows employers to benefit from the new method if their EMF would have gone down, but prevents any adverse impact for employers whose EMF would have increased. Of course, changes in the EMF based on claims frequency and costs would still occur.**

**The department believes this approach responds to the public concerns and allows us the opportunity for discussion of the principles behind the proposal. The intended result was that each employer pay a more appropriate price for their insurance—but we are open to further collaboration with our stakeholders to maintain incentives for safe workplaces and financial consequences for higher than average worker injuries. The department looks forward to meeting with stakeholders during 2007 to engage in these discussions.**

**Comment:** Reductions in the contingency reserve should start with lowering the LDF's in Retro Programs so that these program return to the same condition as they were prior to the '01-02 rate holiday manipulation. Retro employers bear 100% of the risk for a penalty – paying more premiums – and should be fully rewarded for outperforming the Department of L & I. With 50% of the employers in Washington State participating in Retro Programs, why is L&I jeopardizing their continued viability?

**Response:** This concerns the proposed medical aid rate holiday which will be the subject of hearings in December as a separate proposal.

**Comment:** I am writing in support of the proposed cuts: we are one of the employers who have an excellent history with no claims so I am very happy to be rewarded by a decrease in the rates.

**Response:** Depending on the claims experience of their industry, most firms will benefit from the newly proposed calculation.

**Comment:** We are opposed to the idea of lowering rates for the employers and increasing costs to the workers of this state. At least my understanding is that there could be a small increase. And so we do not agree that the employers should get a decrease while the workers get an increase, especially where – currently this is the only state that requires that workers pay at least 25% of the cost of the compensation fund. We would

also oppose lowering rates for employers by a proposed rate holiday. Since, again, the proposal does not include one for the workers.

**Comment:** And I look at this ;proposal and I see that, you know, in the very beginning of the proposed two percent rate decrease that it's not even mentioned that the two percent –the first general rate reduction in the six years it will save employers about \$31 million in premiums, I don't see where the department has stated that the employees or the injured worker would also be benefit from the workers' compensation decrease. And like I say, I'd just like to be a voice for the inured worker. There's many times that they are often forced into bankruptcy, losing, you know, funds every—for every day that they're of work, they're not getting the percentage that they would normally would receive if they were injured on the job.

**Response: Worker benefits would not be changed by the proposed rate decrease. The decrease is in the premium rate which is paid by the employers.**

**Comment:** Overall, I'm pleased with the rate reduction. But I feel in the construction trades that the painters are the only ones that really will not realize a net decrease. And I think that's attributed to the fact that they continue—the state continues to have two risk classes in this trade, and I'm baffled as to why. Most of our revenues are generated in the summer months when the weather is good, which applies to outside work, and the rate during that period of time is double what it is for interior work, which in the painting industry, painting can only be done when the weather is good in most cases, and that's when the bulk of our revenues are generated. So I feel that we are penalized during this period of time with the way the rate is set versus what it is in the winter months when the work is done inside. Similar trades like wood frame, building constructions, I would think that you would encounter this same safety risk in both of those trades, but yet I don't see two different rates. So my question is—I would ask the state to, you know, look at the reasons why they have the two rates and perhaps, you know, just use one rate like they do in all the other trades.

**Response: The department established an exterior and interior painting classification at the request of firms in the painting business a number of years ago. As time has gone by, the rate for interior painting has continued to decrease due to lower cost of claims and frequency of claims. Exterior painting has proven to be more hazardous. At one time, the department also created a class for handyman carpenters that was tied to the framing class. Based on its experience, that class if now a class of its own, and its rate is approximately 5% higher than the framing class.**