

CONCISE EXPLANATORY STATEMENT

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

This rulemaking amends the tables of risk classification base premium rates, experience rating calculations, and retrospective rating parameters for the workers' compensation insurance program effective February 28, 2011. The revised risk classification base rates are based on updated loss and payroll experience and an overall average 12 percent increase per hour worked. The adoption of this rule makes permanent the emergency rulemaking filed November 16, 2010, and effective January 1, 2011.

The date of adoption for this rule is January 28, 2011.

The effective date for this rule is February 28, 2011.

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

The public comment period for this rulemaking began November 16, 2010, and ended January 4, 2011, at 5:00 p.m.

Public hearings were held on:

<u>Date</u>	<u>Location</u>	<u>Number Attending</u>	<u>Number Testified</u>
January 4, 2011	Tacoma	27	13
January 4, 2011	Spokane	28	4

Below is a summary and/or excerpt of the comments we received and the department's responses. Where possible, the comments were grouped by industry or subject matter.

RATE INCREASES

Comment: Maybe someone should think about cuts in the L&I offices and fieldworkers since you do acknowledge that fewer people are working due to the economy. Then maybe my 2011 rate would not be up 47%. Due to your lack of organization and follow-up on claims and fraud many of us will be forced out of business. What will you do when we are gone? You know the real reason the rates are so high — cut the fat.

Comment: My rates increased in my primary class (6907-01) by 13%. Private insurance companies I deal with in other states (California) only increased my premium 1% this year and only by 3% in the last 3 years. I was told that California's total book of workers comp business was valued at \$40 million. If they can survive, why can't Washington with the billions it pulls in?

Comment: Social service agencies are already frantically scrambling to creatively address the cost reductions proposed in the Governor's budget while simultaneously advocating on our clients' behalf. The proposed 12% L&I rate increase directly impacts the health of our community.

Many who commented sent a standard email template with the following message: The announced 12% industrial insurance rate increase is much higher for construction employers,

falling between 23%-41% in terms of the accident fund (employer paid). Medical aid rates (split with employees) decreased -5% to -15%. For businesses like construction that function in a bid environment, these increases must be absorbed and can create significant hardship. This year we are also incurring a large rate increase for unemployment taxes.

Comment: I used to have 50 full time employees and am now at the lowest level of employees in 27 years. I have 21 full time employees and shrinking. I can't continue to hold the burden of taxation that is being recommended or requested by our government agencies. A 12% increase consideration with the initial 6.5 cents per hour interim increase is going to be breaking the backs of what is left of small business in Washington State. A 'standard' formula should not dictate whether or not an increase is implemented during this recessionary period. It is time for a paradigm shift in your agency.

Multiple comments were received similar to the following: Our rate was considerably higher than 12%. I don't believe that our experience rating over the last four years would reflect that kind of an increase. Please review our rate calculation and provide me with the calculations that support that rate. Please also provide me with the staffing cost for L&I for the last three years and the claim quantity processed during that period.

Comment: The State announces 12% workers' comp rate hike. What's up with this? The "Socialistic State of Washington" seems determined to cripple the small business owners until we are all out of business and then what? We are tired of the "out of control spending" of this state and the lack of concern for small business owners.

Comment: The Employer Newsletter said the increased rate was an average of 12%. I don't understand why my increase went up from 3.6906 to 5.4355 which is 37.5% increase and could cost me up to \$30,000 more this year. How am I supposed to pass this on to my customers in this economy?

Comment: We are a logging contractor and we log for various timber companies here in Eastern Washington who we are under contract with at a certain 'bid' price that we had to provide to them. Once we have signed the contract and start the job we have no way of getting any type of increase in rates in our contract. They don't care that fuel; insurance premiums, major breakdowns and all the other taxes have increased during that contract. Should I layoff all these men and just shut 'er down. There is not enough money to go around. Where do we go from here? This will break us! I feel I have been one of those employers in good standing for a long time so I am being punished because of the people that have not followed the rules.

We are a contract logging company and struggling to stay in business. We have cut and squeezed our budget to make ends meet. The L&I Employer Newsletter announced this increase is necessary to cover costs for the next year. With an increase of this size, many of us will have to close our doors.

Comment: I am a farm labor contractor with classification 5004. I have found that to report honestly is to put myself out of work. L&I has one inspector for farm labor contracts and he only has time to cover Eastern Washington. I am behind on paying my workers comp and I intend to pay up. Again, the issue is I honestly report the hours. In the upcoming winter tree planting season, nearly every (farm labor) contractor will employ illegal, undocumented workers and under report hours. Raising the rates is not the answer.

Comment: I am a contractor here in Washington. These rate increases will force us to cancel work contracts because we can no longer afford the tax implications. Also, what you will see is contractors will resort to paying their employees cash in order to win the job bids. These rate increases will push the honest contractors out of business. We have to lower our prices and

payroll in order to stay alive, but now the government has pushed the tax base up to a point where you will see a true division between government and small business.

What happens to a project that I bid last summer on a new construction government job? I was low bidder and kept my numbers very tight. Due to the increase in my rates, I will have to pay each of my employees a dollar more an hour for their workers compensation as well as other jobs I bid before the rate increase. Where does that money come from? It is not in my bid so do I take a loss on the job? When the job is done do I join the ranks of OUT of business after 35 years in business? Why did my rates go up that much?

We aren't going to have any choice but to lay off most of our employees and downsize our business. I hope that you will reconsider this increase not only for our company but for all the small business owners who are struggling to keep their businesses open. Please rethink the decision and keep jobs.

Comment: Today I received my 2011 Rate Notice from L&I and I was shocked and frustrated to learn that you want +24.29% rate increase for my truck drivers and +19.855 increase for my warehouse employees. This is counter to the letter I received on 10/12/10 from L&I's Janet Morris congratulating me on "Keeping Washington safe and working." I have had zero claims in three years, and have invested thousands of dollars in extra training and equipment to help keep my employees safe. I am formally requesting an appeal to your proposed rates and a written itemized response on any rate increases.

Comment: It is difficult to understand why rates are being raised across the board for companies that have a history of no claims -- our company is claim free and has been for all the years of my ownership, yet we're being asked to pay more to offset costs for companies who have made claims and for the overall impacts of the recession. As the state continues to seek additional taxes to cover budgetary shortfalls, they force small companies like ours to make the hard decision of staying open or closing our doors.

Comment: As a safe Washington State general contractor the proposed large rate increase for Washington L&I is of great concern. As a safe contractor with the lowest modification factor possible, the large L&I rate increase is a penalty to us. The increase is used to pay for those receiving benefits from injuries. We were not a factor in those injuries but with the large increases in rates we are being made obligated to pay for those costs. Those companies that are the cause of the injuries should absorb the costs of those injuries not those companies that practice and promote safe work conditions. Increase the modification factors for those companies responsible for the injuries not the L&I rates.

Department response: First and foremost, we acknowledge the difficulty increased rates present to businesses across our state. Despite our efforts to contain costs, the harsh economic downturn and severity of claims forced us to increase rates by an average of 12%. It is important to note that we thoroughly evaluated options prior to settling on 12%. We made a decision to use reserves in order to keep the rate increase lower than recommended.

During testimony, employers expressed concern regarding the increase in their rates despite having experienced no claims in recent years. Additionally, the majority of testimonies were from businesses in industries which experienced an average increase higher than 12%. We heard from very few, if any, whose rates increased at or below 12%. Many of the comments came from businesses in high risk industries such as logging, construction, and manufacturing. It is important to know that these businesses are generally impacted more severely than others such as retail or office work. Workers in these industries are exposed to more hazardous conditions, and therefore, the rates start out high.

In Washington, workers' compensation rates are divided into three primary components: the Accident Fund, which pays for lost wages, disability awards, and pensions; the Medical Aid Fund, which pays for hospital and medical care; and the Supplemental Pension Fund, which pays for cost-of-living adjustments. Employers must pay the full amount of the Accident Fund component and one-half of the Medical Aid and Supplemental Pension Fund premiums. Additionally, the percent each component makes up in the total premium varies. For many industries, the Accident Fund premium is largest because wage replacement benefits cost more than medical care in many instances. An industry, such as logging, experiences more severe injuries with a higher lost wage than say, retail.

From an actuarial perspective, L&I increased the overall average premium rates 12%, with the average increases by fund as follows:

Accident Fund:	29.8%
Medical Aid Fund:	-10.3%
Supplemental Pension Fund:	11.2%

Many of the employers who testified indicated a strong commitment to maintaining an accident-free loss history. Understandably, there is some confusion when there is seemingly not enough discount applied for such effort.

First, maintaining a safe work environment and bringing workers back to work quickly and safely does have a return on investment. Without claim-free discounts, many employers would experience much higher premium rates. Second, risk is spread in each of the classifications, which helps keep premiums lower for those who have had a tough year and not penalizing those who have worked to keep a strong workers' compensation program. In the end, however, an industry where workers are exposed to more hazards will pay more in premiums regardless of safety record or loss history.

While employers with claim-free discounts (firms with no time-loss or disability awards for three years or more) may see an above average rate increase due to their industry's poor performance, these firms will continue to pay 10 to 40 percent less in premiums than firms that do not have the claim-free discount.

In response to those employers who testified that they struggle to do the right thing by paying premiums for all of their workers, accurately and on time, L&I acknowledges the importance of these efforts. Reporting worker hours honestly and paying premiums timely and accurately helps keep premium rates fair for everyone, especially those engaged in highly competitive businesses such as construction. That is why we have dedicated so many resources to fighting fraud and helping honest employers stay in business.

L&I's Fraud Prevention and Compliance department is committed to working with employers to find contractors who are under-reporting worker hours. You can contact them at (360) 902-4763 or EmployerFraud@lni.wa.gov.

RATE ANNOUNCEMENT DELAY AND 1082 REFERENCES

Testimony at the hearings reflected concern regarding the timing of the Department's rate announcement and the November election and Initiative 1082.

Comment: I do not agree with the tactics of the Department of L&I. The Department should not have been able to hold back the proposed rate increase until after the election. I have one month to figure out how to pay my increased taxes with less work. Since I will also have to lay at least one worker off to pay for the increase in taxes, I would have appreciated/expected more

openness in rate changes; I'm the one paying for this system. The rates should have to wait to be adopted at least as long as we had to wait to hear what our new rates would be. You talk about fairness and working with us, so let's see how willing you are going to be to listen to the people who are essentially the major contributors to your business.

Comment: The state ran a campaign against worker's comp reform that was dishonest—promising it would increase employer costs by factoring out the employee contributions that most employers would have happily lost to gain a more efficient system – and hiding the exorbitant increase that was clearly in the works. In my mind the state lied to its own taxpayers.

Comment: Please do not raise rates for the whole Construction industry because you are trying to punish your political enemy BIAW. Why are you increasing only the employer's share of the burden? I voted against the recent initiative to allow private companies to compete with L&I but I am starting to change my mind.

Department response: L&I delayed the rate announcement for a few important reasons. A major component of the initiative was changing the calculation of rates from work hours to payroll dollars. There was significant work to compute rates based on this methodology, and for many it would have dramatically changed what they paid. We were mindful of how conflicting information (work hours vs. payroll) might disrupt businesses. In sending out work/hour-based calculations, we ultimately believed it would have been too confusing and unfair to employers to propose a rate based on one method and then have to change it to a completely different method if the initiative had passed.

In addition to considering how the initiative would have impacted proposed rates for employers, L&I also continued to question and analyze how the economy has affected the workers' compensation system. For example, how does the significant drop in construction work and reported claims impact overall costs? How does the reduced number of jobs influence return-to-work after an injury for employers, workers, and medical providers? Taking extra time to evaluate these unprecedented conditions was important in proposing the least possible rate.

We took our role as a public agency very seriously to not influence the election outcome. This was a further consideration, and one in which we consulted with our attorneys in order to make the right decision about announcing rates.

DECREASED EMPLOYEE PAYROLL DEDUCTION

Testimony at the hearings reflected concern regarding the decrease in the employee payroll deduction while the employer portion (Accident Fund and Supplemental Pension) increased.

Comment: My concern is how you arrived at the employer and employee percentages. In my case, the employer percentage increased by 16.84% and the employee contribution decreased by 2%. It is not fair and equitable that employer rates should increase while employee rates decrease.

Department response: In addition to assessing risk exposure by classification and forecasting the degree of severity of claims, L&I must also look at its assets and liabilities in each fund. Following thorough analysis, the Accident Fund rate was increased in order to bring rates up to a level where we were not further drawing down the assets in the fund. The Accident Fund currently has fewer assets than liabilities. To avoid this fund's assets dropping further below liabilities, we had to increase the rates by 29.8%. Because the Medical Aid Fund has higher

assets than liabilities, we were able to draw down the rate level of the fund by 10.3%. This enabled us to offset some of the overall increase in premiums by reducing the Medical Aid Fund rate.

This offset is not equal between employers and employees. The employee portion is half of the Medical Aid and Supplemental Pension fund rates. As a result, the overall employee portion decreased.

WORKERS' COMPENSATION REFORM

There was a variety of testimony related to suggestions for workers' compensation reform at the hearings.

Comment: I realize that the state is also struggling however there are many, many ways a behemoth department like yours can trim waste. In my small business I have had to put key people out of work and cut benefits and pay just in order to hope to break even. I do not believe that your department has made those severe efforts across the board. I have watched the governor propose a budget that in her words is probably 'immoral' and I agree however she has the strength to propose what is necessary to make ends meet. I suggest that your department do the same without passing this extreme rate increase along to desperate business owners.

Comment: Please look for ways to increase efficiency and make the Washington workers' comp system more effective. Don't continue to fund a system that is eroding. That is not the answer. The answer is to reform the system. I am hoping you find a real solution. Not a rate holiday that didn't work last time. We need fixes that are going to revamp a failing system. Stop looking at business owners as money bags and realize that if something isn't done soon then there won't be any more business owners to tax.

Comment: We believe it is critical to have a reliable and sensible industrial insurance system to ensure it remains viable to care for injured workers and ensure small businesses can be competitive. It is incumbent on the Department of Labor and Industries to introduce swift and significant reform to reverse the trends of out of control approval of pension claims and other drains on the system.

Comment: Your consideration of the time loss rate during this reform would be greatly appreciated. As employers, we see workers able to make more on time loss than when working while making tax free income. These tough economic times increase that as an option to some employees. There are a small percentage of those claims that seem to sit on time loss for long periods of time when possibly surveillance and more attention to those claims would help greatly. I have seen claims start Voc training and being allowed far too many chances to drop out and begin again for years.

In addition, to the testimony, the following recommendations were repeated in various comments:

We recommend that the Department of Labor & Industries:

- Assist with new legislation that would allow a settlement option in this state
- Stop paying for conditions that are primarily age related or due to activities outside of work
- Dramatically change how pensions are defined and allowed
- Simplify wage calculations
- Seek administrative efficiencies

A number of employers sent a standard template email containing the following: Major cost drivers of the rate increases to the accident fund are time loss duration and skyrocketing pensions. Some injured workers are earning more on L&I (tax free) than what they had been earning annually while working, reducing incentive to return to work. Another contributor to the inflated L&I timeloss rates is the manner in which cost of living adjustments (COLA's) are calculated utilizing the state's average wage instead of the Consumer Price Index (CPI). As a result, COLA's have consistently outpaced inflation rates and this is a de facto contributing to the rate increases.

Comment: There are administrative efficiencies L&I could readily apply that would improve service to both workers and employers while saving time and money, such as:

- Require claims managers to check with the employer to determine if the worker is being kept on salary before paying time loss benefits.
- On occupational disease claims, the department could give workers the option of releasing their Employment Security records in lieu of writing out their entire work history and dates of employment with each employer.

Comment: Judy Schurke acknowledged, in a letter, that the workers comp system needs fundamental changes. It appears that the response to this need is to form another workgroup to do another study. How long do you suppose this process will take? Employers are faced with increased rates in a difficult economy and, although fewer claims are being filed and these claims are lasting longer, this appears to be an admission that L&I isn't doing their job. One way to improve this situation would be for Washington to allow a competitive workers comp system.

Mentioned in the newsletter was the comment there are fewer claims, but they are lasting longer. What is the department's justification for having fewer claims, but lasting longer? The longer the claim lasts the more people are getting paid.

Department response: The Governor and L&I recognize the need for change in the workers' compensation system. This is why the Governor convened a workgroup comprised of labor and business leaders, led by L&I Director Judy Schurke, to discuss and develop reform ideas.

This group agreed to legislation that will create a statewide medical provider network. The Governor is proposing this legislation along with changes to the following:

- **Safety and Health Investment Project grants:** This program assists employers in developing safe workplaces in collaboration with their employees. Primary prevention of workplace injuries and illnesses is the most effective way to control long-term disability and associated costs.
- **Washington Stay-at-Work Program:** Employers will be eligible for wage subsidies and other assistance when they return their injured employees back to transitional or light duty work. This program will help employers fund the cost of light duty work for workers so they can return as soon as medically appropriate or, even better, stay at work while they are recovering.
- **Statewide medical provider networks:** This proposal recognizes that the needs of injured workers are different, and that use of accepted occupational health best practices will improve recovery outcomes and prevent long-term disability. The department will implement a requirement for basic credentials for treatment of injured workers similar to other public and private health plans. Physicians can qualify for incentives for using best practices and helping workers get back to work.

- **Expand community-based Centers for Occupational Health and Education (COHEs)**, to make centers available statewide by 2015, with priority for expansion to areas of the state currently without access to occupational centers.
- **Make changes in disability benefits:**
 - Increase permanent partial disability awards which compensate workers for permanent physical and mental loss as a result of their injury or disease. Increasing the award will more fairly compensate workers for their loss, and should ensure more acceptance of claim closures, fewer reopened claims, and fewer pensions.
 - Allow an alternative benefit option for workers age 55 and over in lieu of retraining. This benefit allows eligible workers who are medically stable and eligible for retraining to take a lump sum instead of retraining benefits. The lump sum would be based on a portion of the annuity they would receive if they were found eligible for pension, and their claim would be closed and could only be reopened for medical benefits.
 - Total permanent disability pension benefits would also change. They would be reduced for prior permanent partial impairment awards, adjusted for those pensioners who are able to receive some limited earnings, and certain pensions would end at Social Security retirement age when the industrial injury or disease is not the predominant factor for the worker's inability to return to any type of work or be retrained.

In response to comments regarding the Cost of Living Adjustments (COLAs) for time-loss and pension payments, COLAs are based on changes in the State Average Wage and are mandated as part of the workers' compensation statutes.

CLAIMS ISSUES

There were comments made during the hearings related to the claims management performance of the state fund and lack of proper investigation of fraudulent claims.

Comment: It appears that Washington has issues with: (1) doctors and claimants stringing out claims indefinitely; (2) claims managers who don't care about the employer; (3) account managers who are "unavailable" or who don't follow-up and don't return phone calls; (4) lack of competition permits an atmosphere of overpaying state employees in salary and benefits. We manage our claims well. In the past few years, the department has been too free in awarding PPD's. They are not denying obvious fraudulent claims, even when we have given proof of the fraud. It is up to the employer to prove a claim is not valid, rather than up to the claimant to prove they were injured on the job.

The real problem is the managing of the L&I claims. Clamp down on these doctors that make their living off of the continuing L&I injuries that should be given a certain number of days for healing then back to work. Settle the claim sooner without the possibility of reopening them. Most of them reinjure themselves by their own lifestyle.

Department response: L&I is continually innovating to manage claims in the most effective and efficient manner possible. We recognize that successful claims management involves a significant level of commitment from L&I claim managers to appropriately and effectively manage their cases; employers who are actively involved and willing to create return-to-work options; workers who are motivated to get back to work; and medical providers who understand the importance of occupational health practices. We have been hard at work this past year to improve services and create more value for employers and injured workers. L&I's claims division has successfully piloted "Lean" (efficiency) projects to reduce claims' duration and established a collaborative claims unit, which improves dialogue between employers, workers

and providers. In 2011, efforts will continue to expedite claim intake, allow greater access to claim information online and further develop creative approaches to management of complex claims.

Regarding medical-cost containment, we have successfully held down increases in medical costs to below the national and state average. Additionally, we continue to enhance and expand the Centers for Occupational Health and Education (COHE), which have been proven to reduce claim duration and costs; find ways to better manage chronic pain and limit the use and abuse of opioids; expand the preferred drug list to keep costs down; and enhance utilization review for costly radiology services.

Fighting claim fraud is difficult but necessary. L&I claim managers are trained to take into consideration three-party statements (worker, employer, medical provider) when making claim allowance determinations. If information submitted by the employer supports that the worker did not sustain an injury or exposure as alleged, this information certainly will be taken into consideration when making a decision. Protests, such as those disagreeing with a claim because the worker failed to report the injury timely or because there were no witnesses to the accident are not valid reasons alone to deny a claim for benefits.

As we finalize L&I's strategic plan for 2011-2013, our Claims Operations and Employer Services programs are committed to performance improvement, elevating customer service delivery and responsiveness, and making it easier to do business with L&I.