

AMENDATORY SECTION (Amending WSR 10-10-108, filed 5/4/10, effective 7/1/10)

WAC 296-17-31002 General rule definitions. In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) and can be found in **Appendix A** of this manual. Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of these chapters (*chapters 296-17 and 296-17A of the Washington Administrative Code (WAC)*).

The following words or phrases mean:

Account: A unique numerical reference that we assign to you that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

Account manager: An individual who works in the underwriting section of the department of labor and industries and manages an employer's workers' compensation insurance account. An account manager is also referred to as an underwriter.

Actual hours worked: A worker's composite work period beginning with the starting time of day that the employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at 360-902-4817.

Example: *A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.*

All: When a classification contains a descriptive phrase beginning with "all" such as in "all employees," "all other employees," "all operations," or "all work to completion," it includes all operations and employments which are normally associated with the type of business covered by the classification.

This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

And: When this word is contained in any rule it is to be considered the same as the phrase "and/or."

Basic classification: A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC 296-17A-0101 through 296-17A-7400 establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

Bone fide officer: Any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of such officer.

But not limited to: When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

Excludes or excluding: When a classification contains a descriptive phrase beginning with "excludes" or "excluding" such as "*excluding drivers or delivery,*" "*excluding second hand appliance stores,*" or "*excludes construction operations,*" you must report those operations in a separate classification. If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

Exposure: Worker hours, worker days, flat rate, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the

hazards found within a particular business or industry classification.

Free from direction or control: The contracted individual has the responsibility to deliver a finished product or service without the contracting firm or individual either exercising direct supervision over the work hours or the methods and details of performance or having the right to exercise that authority under the contract.

Includes or including: When a classification contains a descriptive phrase beginning with "includes" or "including" such as "including clerical office," "including meter readers," or "includes new construction or extension of lines," you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

Industrial insurance: Refer to the definition of "workers' compensation insurance."

N.O.C.: This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related classifications must be reviewed to determine if the business or industry is specified in another classification.

Example: *You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, tropical fish and birds, and quick print shops. We would assign classification 6406 "Retail stores, N.O.C." to your business.*

Or: Refer to the definition of the word "and."

Premium: The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

Principal place of business: The physical location of the business from which the contract of service is directed and controlled.

Rate: The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

Related by blood within the third degree: The degree of kinship as computed according to the rules of civil law.

Related by marriage: The union subject to legal recognition under the domestic relations laws of this state.

Risk: All insured operations of one employer within the state of Washington.

Temporary help: The term "temporary help" means the same as temporary service contractors defined in (*Title 19 RCW*) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

Underwriter: Refer to the definition of an "account manager."

Within a reasonable period: Establishing an account with state agencies shall be the time prior to the first date on which the individual begins performance of service toward the contract or the date upon which the individual is required to establish an account with a state agency, as otherwise required by law, whichever event shall last occur.

Work day: Any consecutive twenty-four hour period.

Work hour: Refer to the definition of "actual hours worked."

Workers' compensation insurance: The obligation imposed on an employer by the industrial insurance laws (*Title 51 RCW*) of the state of Washington to insure the payment of benefits prescribed by such laws.

AMENDATORY SECTION (Amending WSR 10-21-089, filed 10/20/10, effective 1/1/11)

WAC 296-17-35203 Special reporting instruction. (1)
Professional and semiprofessional athletic teams. Athletes assigned and under contract to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance. Athletes assigned to a Washington-domiciled sports team but under contract with a parent team domiciled outside of the state are mandatorily covered by Washington industrial insurance unless the player is eligible for coverage in another state, and there is a valid coverage agreement as described below.

A player is eligible for coverage in another state only when both the player and the employer agree in writing that the employment is principally localized in that state.

Example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they cannot agree to be under California coverage since California doesn't qualify as a state in which the player competes in regularly scheduled games.

(a) Upon request, the department will provide forms to the owners of professional and semiprofessional sports teams for entering into agreements for both the sport player and the sport team. These agreements are referred to as "coverage agreements." Unless coverage is refused in the alternative state, the coverage agreement will determine the worker's home state for workers' compensation coverage.

(b) When a sport team and a player agree to workers' compensation coverage in another state, the following rules apply:

Sport player coverage agreement:

(i) A sport player coverage agreement must be signed by the team (employer) and each individual player (worker) covered out-of-state. Workers' compensation premiums for any work performed by the player before the agreement was signed must be paid to the department. To be valid, an agreement must be:

- Signed by both parties, dated, and show the name of the state where coverage is provided.

- Agree that the player's employment is principally located in that state.

- Kept as part of the employer's records for at least three years after the player is released from the team.

(ii) The employer must provide the department a copy of a sport player coverage agreement when requested. Employers who do not provide the department copies of a sport player coverage agreement when requested are considered not to have secured payment of compensation as required and all premiums and penalties allowed

for in Title 51 RCW will apply.

(iii) If the employers' out-of-state workers compensation insurer rejects an injury claim because the player is a Washington worker, the employer is considered not to have secured payment of compensation as required and all premium and penalties allowed for in Title 51 RCW apply.

Sport team coverage agreement:

(c) A sport team coverage agreement must be signed by the employer (team) and the qualifying out-of-state workers' compensation insurer. Workers' compensation premiums for work performed before the agreement was signed must be paid to the department. To be valid, an agreement must:

- Be signed by both parties, dated, and show the name of the state where coverage is provided.
- Specify that the team's players are principally localized in that state.
- Specify the insurer agreeing to provide coverage for a team based in Washington.

(d) The sport team coverage agreement must be signed annually. Copies of the agreement along with a current copy of the team's out-of-state insurance policy must be submitted to the department of labor and industries every year the out-of-state coverage is provided.

Premium payments are required for any work performed by Washington players prior to the date the department receives copies of any year's current sports teams' coverage agreement and proof of out-of-state coverage.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign

commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise,

or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and

- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services--Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to

each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

- (i) The name of each worker;
- (ii) The Social Security number of each worker;
- (iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;
- (iv) The basis upon which wages are paid to each worker;
- (v) The number of units earned or produced for each worker paid on a piece-work basis;
- (vi) The risk classification(s) applicable to each worker;
- (vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;
- (viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;
- (ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;
- (x) The workers' total gross pay period earnings;
- (xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;
- (xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(A) The employers' unified business identification account number (UBI).

(B) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(C) The total contract award.

(D) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(E) Physical location/site where the work will be performed including legal description.

(F) Number of acres covered by the contract.

(G) Dates during which the work will be performed.

(H) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - Verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' account online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - Work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(i) The name of the contractor who has been engaged to perform

the work;

- (ii) The contractor's UBI number;
- (iii) The contractor's farm labor contractor number;
- (iv) The total contract award;
- (v) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;
- (vi) Location where the work is to be performed;
- (vii) A contact name and phone number of the person, firm, or corporation who let the contract;
- (viii) The total estimated wages to be paid by the contractor and any subcontractors;
- (ix) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;
- (x) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;
- (j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8
P.O. Box 44168
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) Logging and/or tree thinning--Mechanized operations--Industry rule. The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - Mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) Special drywall industry rule.

(a) **What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) I do some of the work myself. Can I deduct material I as an owner install or finish? Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owners hours} \div (\text{owners hours} + \text{workers hours}) = \text{\% of owner discount.}$$

$$\text{\% of owner discount} \times (\text{total footage of job} - \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

(c) Can I deduct material installed or finished by subcontractors? You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them? To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) Can I be disqualified from using the discounted rates?

Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) If I discover I have made an error in reporting or paying premium, what should I do? If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department

who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

(7) **Safe patient handling rule.** The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift

teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

(8) Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).

(a) **General definitions.** For purposes of this section, the

following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

Note: Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

(b) **Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state?** A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, it will not need to pay premiums in Washington for work in the other state during the calendar year, as long as it fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage

for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at: <http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTerritorial/Default.asp>

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

Note: Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

(c) What if a Washington employer knows the Washington workers work in another state will exceed the temporary and incidental period? If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, it must immediately provide the department with proof of out-of-state coverage in order to avoid Washington premium liability for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

(d) What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but it does not occur? If a Washington employer did not pay workers compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or nonconsecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and interest. The fourth quarter report is due by January 31 of the following year.

(e) What records must the employer keep while employing Washington workers in another state? In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

(f) What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental? A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report

of out-of-state work to the department for each state in which it has Washington workers performing work. The supplemental report must include the following information:

(i) The Washington employer's unified business identification number (UBI).

(ii) The Washington employer's department account identification number.

(iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.

(iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.

(v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

(vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.

(vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.

(viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state. Copies of pertinent records must be made available to auditors in the event of an audit.

(g) **Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state?** Washington workers may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

(h) **If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington?** Yes, but only if the Washington employer:

(i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;

(ii) Provides proof of out-of-state coverage;

(iii) Filed the appropriate quarterly reports with the department when due; and

(iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

(9) Special for-hire taxi/industry rules. All for-hire vehicles must be covered for workers' compensation insurance. The owner of the vehicle is responsible for the workers' compensation insurance premiums.

(a) What is the unit of exposure for taxis? Flat rate - The rate is based on two shifts, the equivalent of nine hundred sixty

hours per quarter, without regard to the number of hours actually worked per shift.

Actual hours - The rate is based on per actual hour worked. For-hire vehicle owners must maintain a verifiable record of all hours worked.

(b) **Can I use a flat rate for reporting some vehicles and actual hours for reporting other vehicles?** Yes. Both methods of reporting are available to you. For those vehicles where you have records of activity or usage, you can report actual hours. For vehicles where these records are not available or not maintained, you must report and pay premiums on the flat rate.

(c) **What happens if premiums are not paid?** If the for-hire/taxi vehicle owner does not pay premiums, the department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1401 Classification 1401.

1401-01 Taxicab companies - Flat rate

Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, incidental "cabulance" services which may be offered in conjunction with the taxi service (~~(, and maintenance/repair of the vehicle when performed by employees of an employer subject to this classification. Businesses that operate pedicab and horse-drawn carriage services are included in this classification)~~). This classification is for reporting taxis on a flat-rate basis. A flat rate is the equivalent of nine hundred sixty hours per quarter.

This classification excludes: Actual hours reported by for-hire establishments in classification 1404-02; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cabulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers with no other job duties who may be reported separately in classification 4904.

Special note: Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.

Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

1401-02 Taxicab companies - Actual hours

Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, and incidental "cabulance" services which may

be offered in conjunction with the taxi service. This classification is for reporting taxis on an actual hours basis.

This classification excludes: Flat rate reported by for-hire establishments in classification 1404-01; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cabulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers with no other job duties who may be reported separately in classification 4904.

Special note: Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.

Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

1401-03 Pedicab and horse drawn carriage companies

Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, and assisting passengers in and out of the vehicle. This classification also includes the care and feeding of animals while vehicle is available for transporting passengers.

Businesses using this classification report the actual hours of operation per for-hire vehicle and must maintain records that are verifiable.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1404 Classification 1404.

1404-06 Vessels, ferries, tugs, and steamboats, N.O.C.

Applies to employees not covered under federal jurisdiction, or another classification (N.O.C.), who provide services for seaworthy vessels such as ferries, tugs, or steamboats at the docking site or on adjacent land. Vessels may operate seasonal or year-round. Employments include, but are not limited to, dock workers, maintenance workers, traffic control personnel, and night security personnel.

Special note: Care should be exercised prior to assignment of this classification as the workers could be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act. A detailed description of these acts can be found in classifications 0104 or 0202.

1404-07 Train rides

Applies to establishments engaged in the operation of passenger excursion train rides for scenic or amusement purposes on an intrastate basis only. Excursion train rides are typically operated from a mountain, lake or similar site. The trains may operate on a seasonal basis in direct relation to the volume of tourists, weather conditions, or dates of local celebration. Employments in this classification include, but are not limited to, drivers/engineers, guides, lecturers, hostesses, and maintenance personnel. Ticket sellers may be reported separately in classification 4904 provided that they do not handle baggage and that the conditions of the standard exception general reporting rules have been met. On-board food service personnel may be reported separately in classification 3905 as long as their duties are limited to food service and they do not facilitate the train ride or train ride operation in any way.

1404-11 Escort and pilot cars

Applies to establishments that provide escort or pilot car services for others. The duties include driving ahead of, or behind, various types of vehicles.

This classification excludes employees of an employer assigned to drive escort or pilot cars in connection with the delivery of equipment, buildings, goods, or similar items which the employer sells or contracts to deliver. Such employment is to be reported separately in the classification applicable to sales or delivery of such items. For example, an escort driver employed by a common carrier transporting a modular home to a customer's site is to be reported separately in classification 1102.

1404-12 Cabulance and paratransit

Applies exclusively to establishments that provide on-demand, nonemergency transportation services to passengers with special needs. Vehicles used are usually vans that are equipped for accessibility to accommodate passengers with mobility limitations including passengers in wheelchairs or gurneys. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, assisting passengers in and out of the vehicle, and maintenance/repair of the vehicle when performed by employees of an employer subject to this classification.

This classification excludes: Cabulance services offered in conjunction with a taxi service which are to be reported separately in classification 1401, cabulance services offered in conjunction with an ambulance service which are to be reported separately in classification 1405, paratransit services offered in conjunction with a municipal bus or transit system which are to be included in classification 0803 or 1501 as appropriate, ambulance services which are to be reported separately in classification 1405, limousine drivers who are to be reported separately in classification 6301, and dispatchers with no other duties who are to be reported separately in classification 4904.

Special note: Care should be exercised in determining what type of cabulance service is being provided. This classification *is not to be* assigned when provided as an incidental part of a taxi cab service subject to classification 1401. A cabulance service as defined in this rule will need a specialized van or bus to transport passengers as opposed to a passenger automobile that is not equipped to accommodate special mobility needs (~~(, and~~ ~~whereby)~~). The transportation service ((~~has been~~)) must be prearranged.

Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-6301 Classification 6301.

6301-00 Sales personnel: Vehicles and marine pleasure craft

Applies to sales employees of establishments engaged in selling and/or leasing new and/or used automobiles, trucks, campers, recreational vehicles, mobile homes, motorcycles or other all-terrain vehicles, or boats and other marine pleasure craft and who are not covered by another classification assigned to the employer's account. Duties contemplated by this classification are limited to sales training, test driving, showing and demonstrating vehicles, completing paper work, and arranging for delivery of purchased vehicles.

Special note: This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

6301-06 Instructors of driving schools

Applies to instructors of driving schools. Instructors duties include, but are not limited to, demonstrating driving techniques, and observing student drivers.

This classification excludes administrative staff and classroom instructors of driving schools who are to be reported separately in classification 6103; vehicle repair or maintenance staff who are to be reported separately in classification 3411; and high school driving instructors who are to be reported separately in classification 6104.

Special note: This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

6301-07 Limousine drivers

Applies to drivers of establishments engaged in providing limousine services to others. Limousine services provide luxury transportation for special occasions such as, but not limited to, birthday parties, weddings, dances, sporting events, concerts, and corporate business functions. Clients usually travel in groups from two to ten. Drivers are professionally trained chauffeurs; they generally provide services by appointment from specific locations to set destinations, and often wait with the vehicle while clients attend events. Depending on the occasion, the limousine service may also provide beverages, snacks, balloons, or flowers. Since the service is intended for luxury as opposed to meeting deadlines, the hazards of driving differ from most other professional drivers.

This classification excludes employees who repair and/or service the company's limousines who are to be reported separately in classification 3411.

Special note: This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

Special note: Clerical office employees may be reported separately in classification 4904 provided all the conditions of the general reporting rule covering standard exception employees have been met.

Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.