

WAC 296-15-266 Penalties. ~~((What must a self-insurer do when the department issues an order assessing a penalty? The self-insurer must make payment of the penalty assessment on or before the date the order becomes final.))~~ (1) Under what circumstances will the department consider assessing a penalty for an unreasonable delay of benefits, when requested by a worker? Upon a worker's request, the department will consider assessment of an unreasonable delay of benefits penalty for:

(a) Time loss compensation and loss of earning power: The department will issue an unreasonable delay order, and assess associated penalties based on the department's calculation of the time loss or loss-of-earning-power benefits, if a self-insurer:

(i) Has written medical certification that the claimant is unable to work because of the industrial injury or occupational disease; and

(ii) Fails to make the first time loss or loss-of-earning-power payment to the claimant within fourteen calendar days of notice that there is a claim*, or fails to continue time loss or loss-of-earning-power payments on regular intervals as required by RCW 51.32.190(3); and

(iii) Fails to request, with supporting medical evidence and within thirty days of receiving notice of the claim, that the department settle a dispute about the covered conditions or eligibility for time loss compensation or loss-of-earning-power benefits as required by RCW 51.32.190(1).

* Notice of claim is provided to the self-insured employer when all the elements of a claim are met. The elements of a claim are:

- Description of incident. Examples: Self-Insurance Form 2 (SIF-2), physician's initial report (PIR), employer incident report, or other employer records.
- Diagnosis of the medical condition. Examples: PIR, on-site medical facility records if supervised by provider qualified to diagnose, or other medical records.
- Treatment provided or treatment recommendations. Examples: PIR, on-site medical facility records if supervised by provider qualified to treat, or other medical records.
- Application for benefits. Examples: SIF-2, PIR, or other signed written communication that evinces intent to apply.

(b) Payment of medical treatment benefits: The department will issue an unreasonable delay order, and assess associated penalties based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to pay all fees and medical charges within sixty days of receiving a proper billing, as defined in WAC 296-20-125 through 296-20-17004.

(i) If the self-insurer believes that it should not pay the billing, or if there is a dispute regarding whether the treatment is for a related condition, the self-insurer must, within sixty calendar days of receiving a billing, clearly state in writing to the worker, the medical provider, and the department why the payment is denied.

(ii) The department will review the reasons provided by the self-insurer and will make a decision by legal order within thirty days.

(c) Authorization of emergent or life-saving medical treatment benefits: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to respond to requests to authorize emergent or life-saving treatment, by either allowing or denying the request within thirty business days of the worker's discharge, or fourteen days after receiving notice of the request for treatment, whichever happens first.

(i) If the request is denied, the self-insured employer must clearly tell the medical provider, the claimant and the department, in writing, why the request is being denied.

(ii) If the medical provider or claimant disagrees with the self-insurer's decision, either of them may file a dispute with the department.

(d) Refusal to pay benefits without cause: The department will issue an order determining an unreasonable refusal to pay benefits, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer denies a benefit such as time loss compensation, loss-of-earning-power compensation, or medical treatment if a self-insurer's denial fails to contain genuine medical, vocational, or legal doubt about whether the self-insurer should pay the benefit. Accrued principal and interest will apply to nonpayment of medical benefits.

(e) Paying benefits during an appeal to the board of industrial insurance appeals: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer appeals a department order to the board of industrial insurance appeals, and fails to provide the benefits required by the order on appeal within fourteen calendar days, unless the board of industrial insurance appeals grants a stay of the department order. Accrued principal and interest will apply to nonpayment of medical benefits.

(2) How is a penalty request created and processed?

(a) An injured worker may request a penalty against his or her self-insured employer by:

(i) Completing the appropriate self-insurance form or sending a written request providing the reasons for requesting the penalty;

(ii) Attaching supporting documents (optional).

(b) Within ten days of receipt of a certified request, the self-insured employer must send its claim file to the department. Failure to timely respond may subject the self-insured employer to a rule violations penalty under RCW 51.48.080. The employer may attach supporting documents. If the employer fails to timely respond to the penalty request, the department will issue an order in response to the injured worker's request based on the available information.

(c) The department will issue an order on all written penalty requests completed per (a) of this subsection. The department's review during the thirty-day period for responding to the injured worker's request will include only the claim file records and supporting documents provided by the worker and the employer per (a) and (b) of this subsection.

(d) In deciding whether to assess a penalty, the department will consider only the underlying record and supporting documents at the time of the request which will include documents listed in (a) and (b) of this subsection, if timely available, to determine if the alleged untimely benefit was appropriately requested and if the employer timely responded.

(e) The department order issued under (c) of this subsection is subject to request for reconsideration or appeal under the provisions of RCW 51.52.050 and 51.52.060.