

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-100 What is the department's ((u))preferred worker((u)) program? The department's ((u))preferred worker((u)) program provides eligible employers with financial incentives to hire certified ((u))preferred workers(~~(, "and to reemploy certified "preferred workers" with developmental disabilities)~~).

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-110 Who may be certified as a ((u))preferred worker((u))? (1) A worker may be certified as a ((u))preferred worker((u if he or she)), in the sole discretion of the supervisor of industrial insurance or the supervisor's designee, if the worker has an open state fund insured claim for an industrial injury or occupational disease, or a closed state fund claim where the closure is not final, that(

(1) Prevents the worker from returning to work with the employer of record, and substantially impairs the likelihood of the worker's reemployment with a different employer; or

(2) Has resulted in payment of time loss compensation benefits for a period of at least fourteen consecutive days, if the worker has a developmental disability as defined by RCW 71A.10.020.) results in a permanent disability which may be a substantial obstacle to employment.

(2) For purposes of subsection (1) of this section, permanent disability is defined as:

(a) A permanent loss of physical or mental function, causally related to the industrial injury or occupational disease, from which, within the limits of medical probability, further recovery is not expected; and

(b) The injured worker's health care provider has permanently restricted the worker from returning to the job of injury; and

(c) The work restrictions in (b) of this subsection are supported by medical findings appropriate to the worker's physical or mental condition.

(3) For purposes of subsection (1) of this section, "substantial obstacle to employment" means one or more of the following limitations apply:

(a) The worker is unable to perform at least one of the essential functions of the job of injury;

(b) The department finds the worker eligible for vocational retraining;

(c) The worker is permanently restricted to a lighter category of physical work demands; for example, a worker previously able to perform heavy work is permanently restricted to sedentary or light work.

(4) The preferred worker certification is assigned to the worker, and the preferred worker incentives are available to any qualified employer who may hire the worker during the preferred worker certification period.

NEW SECTION

WAC 296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020? (1) A worker with a developmental disability may be certified as a preferred worker, in the sole discretion of the supervisor of industrial insurance or the supervisor's designee, if the worker has an open state fund insured claim for an industrial injury or occupational disease, or a closed state fund claim where the closure is not final, that results in payment of time-loss compensation benefits for a period of at least fourteen consecutive days.

(2) A worker with developmental disabilities does not need to apply for preferred worker certification. The department will evaluate the worker's eligibility for certification after receiving the employer's documentation described in WAC 296-16-160(3).

(3) If the health care provider has released the worker without restrictions and the worker is returning to the job of record, a job analysis or job description is not needed.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-120 Who certifies industrially injured or ill workers as ((♣))preferred workers((♣))? Only a department employee with authority to do so may certify a worker as a ((♣))preferred worker.((♣))

NEW SECTION

WAC 296-16-125 Can a worker's preferred worker certification be revoked? The department can revoke the preferred worker certification when the worker no longer meets the certification requirements outlined in WAC 296-16-110.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-130 How long does a worker's ((♣))preferred worker((♣)) certification last? (1) A worker's ((♣))preferred worker((♣)) certification lasts for thirty-six consecutive months of employment at medically approved work, and will not be extended.

((Exception:

The department may interrupt the certification period if:

(1) Medical documentation shows that the worker is unable to work or look for work, due to the industrial injury or occupational disease for which the "preferred worker" certification was granted; and

(2) The worker's claim for the same injury or disease is still open.))

The thirty-six consecutive month period begins the first date the certified preferred worker actually returns to work at a medically approved job, but ends no later than five years after claim closure.

(2) The department may interrupt the certification period if medical documentation shows the worker is unable to work due to the industrial injury or occupational disease in:

(a) The open claim in which preferred worker certification was granted; or

(b) A new, accepted claim for a condition or conditions sustained while performing medically approved work as a certified preferred worker.

(3) If the department interrupts the certification period, and when the worker is again able to work (~~or look for work~~), the certification period will resume. (~~The period of interruption does not count toward the thirty-six month total.~~)

AMENDATORY SECTION (Amending WSR 05-17-040, filed 8/9/05, effective 9/15/05)

WAC 296-16-135 Will the department grant a worker (())preferred worker(()) certification under multiple open claims at the same time?
No. While a worker may have multiple open claims at the same time, the department will not grant the worker (())preferred worker(()) certification under more than one of these claims at the same time.

(1) If the worker still has (())preferred worker(()) certification time remaining from a previous claim, and also applies for (())preferred worker(()) certification under a subsequent claim, the department will not grant the worker additional certification. In order to seek employment as a certified (())preferred worker,(()) the worker must use the certification time remaining from the previous claim.

(2) If the worker received (())preferred worker(()) certification under a prior claim, and the thirty-six months of that certification has ended, the worker may be eligible for (())preferred worker(()) certification under a subsequent (~~or new open~~) claim.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-140 Which employers are eligible to benefit from the (())preferred worker(()) program? (~~When an employer offers the worker a medically appropriate job, the employer is eligible to benefit from the "preferred worker" program if:~~

~~(1) The employer is the employer of record who reemploys their own worker, and the worker:~~

~~(a) Has a developmental disability as defined by RCW 71A.10.020; and~~

~~(b) Under the open claim with that employer, has received payment of time loss compensation for a period of at least fourteen consecutive days; or~~

~~(2) The employer is NOT the employer of record, and the employer hires a certified preferred worker.)~~ The following employers may be eligible to benefit from the preferred worker program if they employ a certified preferred worker in a job approved by the injured worker's

health care provider and the department's credentialed vocational re-
habilitation professional:

(1) A Washington state fund employer with an industrial insurance
account in good standing with the department, as outlined in WAC
296-17-31004(4); or

(2) A self-insured employer who employs a worker who is certified
as a preferred worker under a state fund claim.

NEW SECTION

**WAC 296-16-145 Who must confirm the worker has returned to work
that is consistent with the worker's limitations and physical restric-
tions?** (1) Preferred worker benefits are only available when the of-
fered job is approved by:

(a) A credentialed vocational rehabilitation professional who
meets the qualifications in WAC 296-19A-210; and

(b) The injured worker's health care provider.

(2) For the purposes of chapter 296-16 WAC, the injured worker's
health care provider is defined as:

(a) The attending provider; or

(b) The current primary care provider; or

(c) In cases of diagnosed and accepted mental health conditions,
the treating psychiatrist or psychiatric advanced registered nurse
practitioner or, if there is no treating psychiatrist or psychiatric
advanced registered nurse practitioner, the treating psychologist.

(3) The final determination in subsection (1) of this section
must be made by the department's credentialed vocational rehabilita-
tion professional, who may make a referral to an independent creden-
tialed vocational rehabilitation professional for an on-site job anal-
ysis or other evaluation that may be necessary to confirm the job is
appropriate for the worker's restrictions.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective
1/15/05)

**WAC 296-16-150 What benefits ~~((do))~~ can an eligible employ-
er((s)) receive from the ((u))preferred worker((u)) program? ~~((+1)
Eligible employers insured with the state fund who hire a certified
"preferred worker," or who reemploy a certified "preferred worker"
with developmental disabilities:~~**

~~(a) Do not pay accident fund and medical aid fund premiums for
that worker during the "preferred worker" certification period; and~~

~~(b) Will not have the cost of any new claim filed by that worker
charged to their experience rating, if the claim is for a new injury
sustained or an occupational disease diagnosed during the "preferred
worker" certification period.~~

~~(2) Eligible self-insured employers who hire a certified "prefer-
red worker," or who reemploy a certified "preferred worker" with de-
velopmental disabilities, will receive reimbursement from the second
injury fund for all benefits paid on any new claim filed by that work-
er, if the claim is for a new injury sustained or an occupational dis-~~

ease diagnosed during the "preferred worker" certification period.))
(1) In the sole discretion of the supervisor of industrial insurance or the supervisor's designee, an eligible employer, insured through the state fund or self-insured, may receive benefits shown in the table below:

<u>A preferred worker certified on or after January 1, 2016, who is hired by:</u>		
<u>Employer</u>	<u>State Fund employer (pays premiums to L&I)</u>	<u>Self-insured employer</u>
<u>(a) Wage, clothing, and equipment reimbursements specified in subsection (2) of this section.</u> <u>(b) Continuous employment incentive specified in subsection (3) of this section.</u>	<u>X</u>	<u>X</u>
<u>(c) Does not pay accident fund and medical aid fund premiums for hours worked by the preferred worker.</u> <u>(d) Will not have the cost of any new claim filed by that preferred worker charged to their experience rating.</u>	<u>X</u>	
<u>(e) Receives reimbursement from the second injury fund for all benefits paid on any new claim filed by that worker during the certification period.</u>		<u>X</u>

(2) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred worker who was certified on or after January 1, 2016, at work approved under WAC 296-16-145, performed during the worker's certification period:

(a) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to sixty-six days in a twenty-four month period and a maximum of ten thousand dollars per worker certification period.

(i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(ii) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the sixty-six.

(iii) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the sixty-six.

(iv) The sixty-six days do not have to be consecutive.

(v) The employer may choose which sixty-six days to seek reimbursement for.

(vi) The employer cannot be reimbursed for dates the employer employed the worker that are more than twenty-four months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The twenty-four month eligibility period ends January 31, 2018.

(vii) The employer must submit the request for reimbursement within one year of the date the work was performed.

(viii) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

(b) Clothing the employer purchased for the worker, necessary to perform the medically approved work, up to four hundred dollars per worker certification period.

(i) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

(ii) When the work ends, the clothing belongs to the worker.

(iii) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(c) Tools and equipment the employer purchased to enable the worker to perform the medically approved work, up to two thousand five hundred dollars per worker certification period.

(i) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

(ii) The employer cannot be reimbursed for tools and equipment purchased prior to offering the job to the worker.

(iii) When the work ends, the tools and equipment belong to the employer.

(iv) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(3) An eligible employer who continuously employs a certified preferred worker at the medically approved job without reduction in base wages for at least twelve consecutive months, beginning on or after January 1, 2016, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor of industrial insurance or the supervisor's designee.

(a) The twelve months begin the date the worker is certified as a preferred worker or the first date of employment, whichever is later.

(b) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the medically approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., thirty-two hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., thirty-two hours per week. The work pattern is the same as the medically approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

(c) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the twelve-month pe-

riod. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

(d) The one-time payment is equal to the lesser of ten percent of the worker's wages or ten thousand dollars. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(e) Only one continuous employment incentive is payable per worker certification period.

(f) The employer must submit the request for the continuous employment incentive within one year of the date the twelve months ended.

(4) If the department receives a valid reimbursement or incentive request from different employers within the same worker certification period, the requests will be paid in the order received by the department up to the limits described.

(5) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a ((u))preferred worker((u))? ~~((An employer must complete an *Intent to Hire Preferred Worker* form. The employer must return the completed form to the department within sixty days from the "preferred worker's" first day of:~~

~~(1) Employment, if the employer is a subsequent or new employer. In these situations, the employer must also provide the department a description of the job offered to the worker.~~

~~(2) Reemployment, if the employer is the employer of record and the worker has a developmental disability as defined by RCW 71A.10.020. In these situations, if the doctor has released the worker without restrictions and the worker is returning to the job of record, a job description is not needed.)) (1) An employer must employ the certified preferred worker in a job that:~~

~~(a) Will continue to be available into the foreseeable future; and~~

~~(b) Is confirmed as consistent with the worker's permanent work restrictions as outlined in WAC 296-16-145; and~~

~~(c) Addresses a business need or provides economic value to the employer.~~

~~(2) The employer will not be eligible for preferred worker incentives if the offered job is any of the following:~~

~~(a) The job of injury with minor or no modifications;~~

~~(b) Work that is beyond the worker's medical restrictions;~~

~~(c) Work which requires training beyond the usual and customary training provided by the employer to similar employees;~~

~~(d) On-the-job training.~~

~~(3) Except for tools and equipment as described in WAC 296-16-150 (2)(c), and the continuous employment incentive as described in WAC~~

296-16-150(3), in no case will the employer receive any preferred worker benefits for dates worked prior to the department's receipt of all required documentation. The employer must submit to the department:

(a) A copy of the completed job analysis or department's job description form, approved by the worker's health care provider; and

(b) The job offer, signed by the worker; and

(c) The preferred worker request form, available on the department's web site, completed and signed by the employer.

(d) Once all appropriately completed documents described in (a) through (c) of this subsection have been received by the department, the employer can be reimbursed for the cost of any tools and equipment as described in WAC 296-16-150 (2)(c) if purchased within sixty days of the first date of the preferred worker's employment.

(4) After the offered job is approved by the department's credentialed vocational rehabilitation professional, preferred worker benefits can be granted. The benefit start date will be no earlier than the first workday after the department receives the employer's completed documentation.

(5) If the job is offered after the preferred worker's claim is closed, the worker's restrictions at time of claim closure will apply.

NEW SECTION

WAC 296-16-180 Can a denial decision about preferred worker certification or employer incentive eligibility be protested or appealed? Yes, the employer, injured worker, or health care provider can send a written protest to the department or appeal to the board of industrial insurance appeals within sixty days from the date the decision is communicated.

REPEALER

The following sections of the Washington Administrative Code are repealed:

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| WAC 296-16-112 | For purposes of the "preferred worker" program, who is the "employer of record"? |
| WAC 296-16-115 | How does a worker apply for "preferred worker" certification? |
| WAC 296-16-170 | Where may an employer obtain an <i>Intent to Hire Preferred Worker</i> form? |