Washington State Department of
Labor & Industries

Update 2021

Self-Insurance

Update

Welcome to Update 2021

- Knowrasa Patrick, Program Manager

  Self-Insurance

Good to Know

Keep Right

Presented by Washington State Patrol

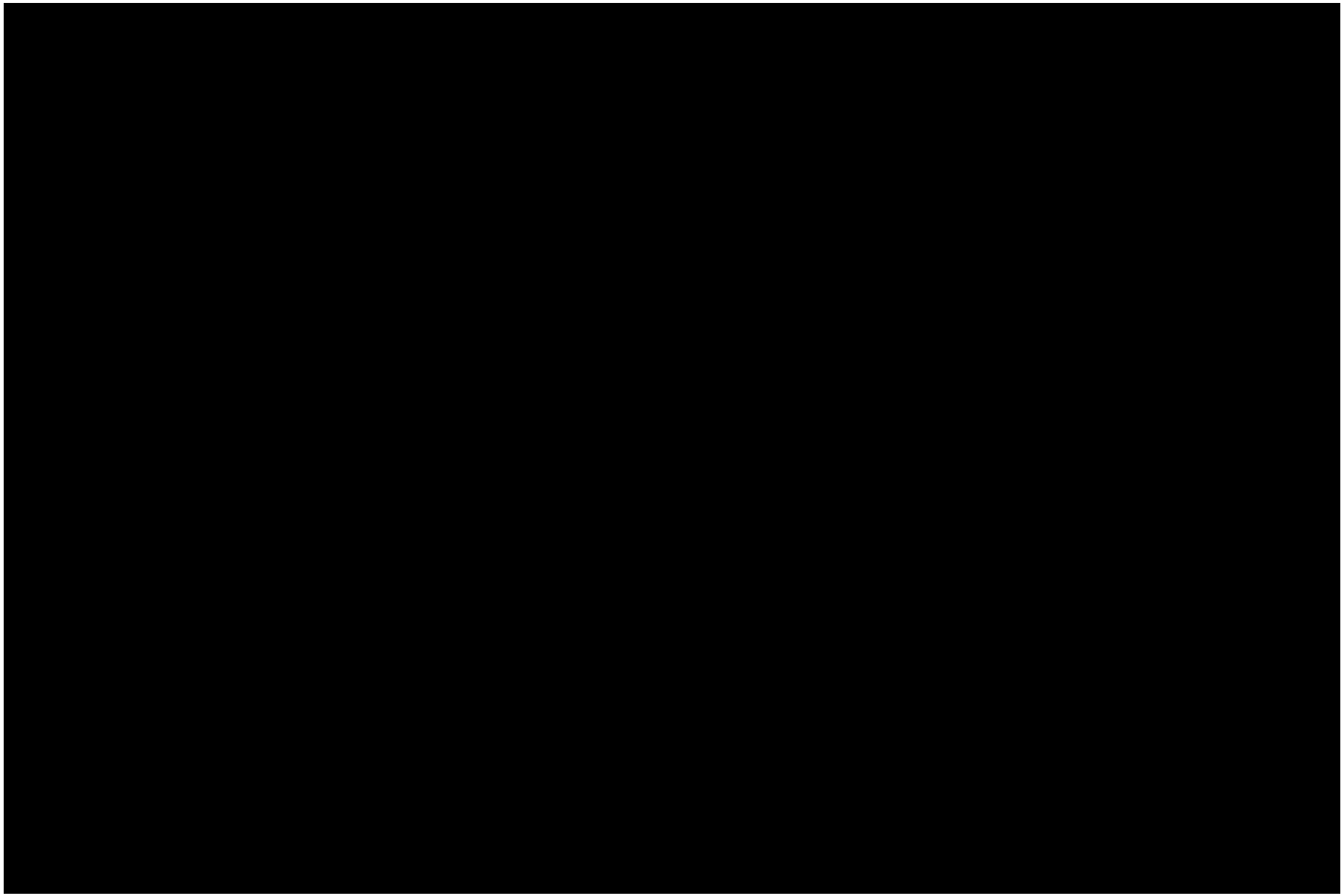
Washington State Department of
Labor & Industries

Legal Updates

Presented by

Anastasia Sandstrom, Assistant Attorney General

Washington State Attorney General Office



ESSB 5172

Dairy and Agriculture Overtime Wages

What is ESSB 5172?

- Engrossed Substitute Senate Bill 5172 has created new rules with regard to Dairy and Agriculture workers and their entitlement to overtime wages.
- It extends overtime rights to all agricultural workers by removing the agricultural exemption.

Why?

- Agricultural workers have long been exempt from the state's Minimum Wage Act overtime requirement, but a group of dairy workers challenged that in a case decided by the Washington State Supreme Court in 2020.
- In Martinez-Cuevas v. DeRuyter Brothers Dairy, the court ruled there was no reasonable grounds for the dairy workers who brought the lawsuit to be exempt from overtime.
- The court said they had a constitutional right to protection for health and safety in a dangerous industry.

What now?

- Agricultural workers, including piece-rate workers, must earn at least the state minimum wage, which is $13.69 an hour in 2021.
- Currently and moving forward, overtime pay must be at least 1.5 times the employee's regular rate of pay.

When?

- The wage change went into effect for dairy workers on July 25, 2021
- The wage change for Agriculture, or non-dairy, workers will become effective January 1, 2022

Important dates

In order to allow the employers of agricultural, or non-dairy, workers time to adjust to this new rule, the law incrementally reduces the number of hours their employees need to work in a workweek before they are entitled to overtime. Beginning:

- Jan. 1, 2022, the overtime threshold will be 55 hours
- Jan. 1, 2023, the threshold will be 48 hours
- Jan. 1, 2024, the threshold will be 40 hours

Dairy Workers

- Dairy workers cannot file claims for overtime hours worked prior to Nov. 5, 2020.
- However, dairy workers can do so if they feel they earned overtime pay after Nov. 5, 2020, but did not receive it.

Agriculture Workers

- The law bars agricultural employees from seeking retroactive payments for overtime worked prior to the law going into effect.

References

Online reference - https://lni.wa.gov/workers-rights/agriculture-policies/overtime

Fact Sheet - F700-215-000 Agricultural Worker Overtime Fact Sheet (wa.gov)

Case Law - MARTINEZ-CUEVAS v. DERUYTER BROTHERS DAIRY, INC., Wash: Supreme Court 2020 - Google Scholar

RCW 49.46.130

Questions

OCCUPATIONAL HEALTH **BEST PRACTICES**

WORKING TOGETHER TO KEEP PEOPLE WORKING

Lumbar Spine Surgery Guideline—Updates on Final Document and Implementation

Zachary Gray, MPH

Washington State Department of
Labor & Industries

A Brief History of Treatment Guidelines

- Guidelines are meant to ensure that appropriate and quality care is delivered in a transparent and accountable manner with significant detail and evidence provided to support criteria and recommendations.
    - Originally, guidelines were created internally by L&I.
- L&I's first guideline—Lumbar Fusion—was produced in 1989 following the establishment of the Utilization Review (UR) program.

A Brief History of Treatment Guidelines

- Following the establishment of the Industrial Insurance Medical Advisory Committee (IIMAC) in 2007, L&I began using subcommittees composed of IIMAC members and community experts to develop guidelines.
- L&I currently has 19 treatment guidelines, with the most recently updated including knee surgery, foot/ankle surgery, and lumbar spine surgery.
    - Lumbar spine surgery guideline completed July 2021.

The Guideline Process

- Topic is selected.
  - Selection is based on feedback from L&I staff, IIMAC, UR vendor, and the community.
  - Emphasis is placed on areas of concern in care, such as safety and efficacy of procedures or problems identified in UR.
- Subcommittee is established.
  - Subcommittee consists of IIMAC members and community experts in the topic area.
  - Subcommittees meet 8 (+/-) times per year.
  - Using the best available medical evidence along with their clinical expertise, the surgical criteria and narrative guidance that composes the treatment guidelines is created.

The Guideline Process

- Final draft guideline is presented to the full IIMAC and made available for public comment.
  - Revisions are completed as needed, and responses to public comment are published along with the updated guideline on the L&I webpage.
- Adoption of the completed guideline is voted on by the IIMAC.
- L&I and its UR vendor implement the guideline.

Lumbar Surgery Guideline—Timeline and Key Dates

- In March of 2019, work began to update current lumbar surgery guideline
  - Expert subcommittee formed with community physicians, members of the Industrial Insurance Medical Advisory Committee, and L&I Staff
- The IIMAC and its Lumbar Surgery Guideline Subcommittee, in partnership with L&I and the Office of the Medical Director, produced the Lumbar Surgery guideline as a best practice standard for treatment of certain lumbar conditions and procedures.
- On July 22nd, the Industrial Insurance Medical Advisory Committee voted to adopt the updated Lumbar Surgery Guideline following an open public comment period.
- Providers who are in the department's Medical Provider Network will be required to follow this guideline as it applies to the treatment they provide to injured workers.
- The guideline is being implemented and in effect on October 3, 2021.

Previous Lumbar Guideline

- Lumbar fusion last updated in 2016
- Lumbar nerve root entrapment last updated 2018, but relatively unchanged since adoption in 1992

Principles guiding this work

- Outcomes of lumbar fusion in the WA workers' compensation system have been very poor.
- In two studies conducted over a 15 year period:
  - Only 1/3 of workers were off time loss two years after fusion.
  - More than 40% of WA workers who had a lumbar fusion more than 10 years ago are permanently disabled.
- In a statewide study conducted by the Spine SCOAP project (Khor and Flum et al.), lumbar surgery outcomes were worse in:
  - Workers' comp cases vs. those covered by other insurance.
  - Smokers, and in those on opioids.

Principles guiding this work

- Since the statewide HTA non-coverage decision on lumbar fusion for degenerative disc disease in 2016, the number of fusions have decreased, but the Department has been seeing increasing requests for fusion following an initial decompressive procedure.
  - There is emphasis in the new lumbar surgery guideline on criteria when repeat surgery is requested following an initial decompressive procedure.
- Greater attention has been paid to fitness for surgery.
  - The smoking cessation policy in the updated lumbar surgery guideline follows the same criteria as the earlier cervical criteria for ACDF surgery.
  - More attention is paid to pre-operative assessment of patients on chronic opioid therapy.
  - These fitness for surgery principals replace prior criteria on relative or absolute contraindications.
-

Scope of Lumbar Guideline

- Updated criteria table for fusion and decompression procedures
- Updated narrative guidance including fitness for surgery, opioids, and substantial evidence synthesis on covered topics

Scope of Lumbar Guideline

Fusion for:	Decompression for:
Spondylolisthesis	Disc Herniation
Prior decompression(s) at same level	Recurrent disc herniation
Pseudarthrosis, with or without hardware failure	Foraminal Stenosis
Recurrent disc herniation	Synovial Cyst
Foraminal stenosis	Nerve Root Entrapment
Adjacent Segment Pathology	Acute Cauda Equina Syndrome
	Central Spinal Stenosis

Notable Changes in the Guideline

- X-ray read by radiologist required for lumbar fusion for spondylolisthesis and lumbar fusion for adjacent segment pathology.
- MRI with contrast required for repeat/revision procedures.
- Further information and guidance on Opioids pre- and post-operatively.
- Smoking cessation required for lumbar fusion procedures, strongly recommended for decompression procedures.

Fitness for surgery

1. Opioids

PREOPERATIVELY:

a) Preoperatively surgeons must check the PDMP and document in the medical record all sources of all ongoing prescriptions for controlled substances as well as morphine equivalent dose (MED) of opioids.

b) Document a coordinate plan for managing surgical pain as well as a post-operative prescriber. Appropriate expectations must be set for postoperative pain management and risk for possible respiratory depression and difficult pain control.

c) Refer for preoperative pain management consult for patients with opioid/substance use disorder, taking buprenorphine or with chronic daily MED of ≥ 90 mg.

d) Document/conduct a recent urine drug screen to identify illicit drug use and/or compliance with prescribed medications.

Fitness for surgery

1. Opioids

POSTOPERATIVELY follow the Bree Collaborative including:

a) Procedures where rapid recovery is anticipated, use of NSAIDS or NSAIDs with acetaminophen (ie Tylenol) is recommended. If opioids are necessary, prescribe ≤ 3 days worth (≤ 8-12 pills).

b) For procedures of medium-term recovery, use non-opioid analgesics and non-pharmacologic therapies as first-line therapies (as above). If opioids are warranted, prescribe ≤ 7 days worth (≤ 42 pills).

c) For procedures with longer recovery times, use non-opioid analgesics and non-pharmacologic therapies as first-line therapies (as above). If opioids are warranted, prescribe ≤ 14 days worth at lowest effective dose.

d) For patients on chronic opioid therapy (COT), use non-opioid analgesics and non-pharmacologic therapies as first-line therapies (as above) and same opioid durations as above based on expected recovery time. Resume COT if this is expected to continue postoperatively.

e) For the unusual cases that warrant more opioids than the expected recovery period, reevaluate what is delaying recovery. Postsurgical opioids should be tapered in **all** cases no later than 6 weeks after surgery.

Fitness for surgery

2. Smoking status and smoking cessation
    a) For nicotine users: Abstinence from nicotine for at least 4 weeks before surgery, as shown by 2 negative urine cotinine tests, is required for all fusions and repeat fusions done for radiculopathy. This does not apply to progressive myelopathy or motor radiculopathy. Smoking cessation products may be covered in some instances, see L&I policy
    b) Requirement vs. best practice
        i. Require for fusion
        ii. Best practice for decompression
    c) Urgent surgical need will not require cessation—progressive motor radiculopathy or cauda equina
    d) Guideline narrative section updated to include information on the importance of post-operative smoking cessation

Fitness for surgery

3. General medical considerations and known comorbidities (e.g. uncontrolled diabetes, COPD)
4. Mental and Behavioral Health
    a) Depression, anxiety, PTSD correlated with poor outcomes
    b) Note consideration of presence prior to proceeding with surgery

Questions?

- Zach— grza235@lni.wa.gov
- Molly— dutm235@lni.wa.gov
- Dr. Glass— glal235@lni.wa.gov

Break

Washington State Department of
Labor & Industries

IME Update

LaNae Lien

Self-Insurance Claims Operations Manager

Engrossed Substitute Senate Bill (ESSB) 6440:

- Amended requirements for Independent Medical Examinations (IMEs)
- Created an IME work group to develop strategies to improve the IME process

Changes Effective 1/1/21

- When an IME can be scheduled
- No show fees
- Rendition of report
- Reasonably convenient

- Changes effect RCW 51.32.110 & 51.36.070

When an IME can be scheduled

- Make a decision regarding claim allowance or reopening
- Resolve a new medical issue, an appeal, or case progress
- Evaluate a worker’s permanent disability or work restriction

No Show Fees

“…the department may not assess a no-show fee against the worker if the worker gives at least five business days’ notice of the worker’s intent not to attend the examination.”

RCW 51.32.110

Rendition of Report

IME report must be sent to:

- The attending physician
- The injured worker

Reasonably Convenient

“The examination must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if the department determines telemedicine is appropriate for the examination.”

RCW 51.36.070

Rulemaking: Updates to Existing WACs

- **WAC 296-20-01002**: Case Progress
- **WAC 296-23-302**: IME Definitions

Rulemaking: New WACs

- **WAC 296-23-308**: When can a case progress examination be scheduled?
- **WAC 296-23-309**: How many examinations can be requested?
- **WAC 296-23-401**: Can the department schedule an examination or order a SIE to schedule an exam after receipt of an appeal?
- **WAC 296-23-440**: Use of independent medical examinations.

Next steps

- CR-102—Nov/Dec 2021(tentative)
- CR-103—Jan 2022 (tentative)
- Training/Communication
- Adoption—March/April 2022 (tentative)

Questions

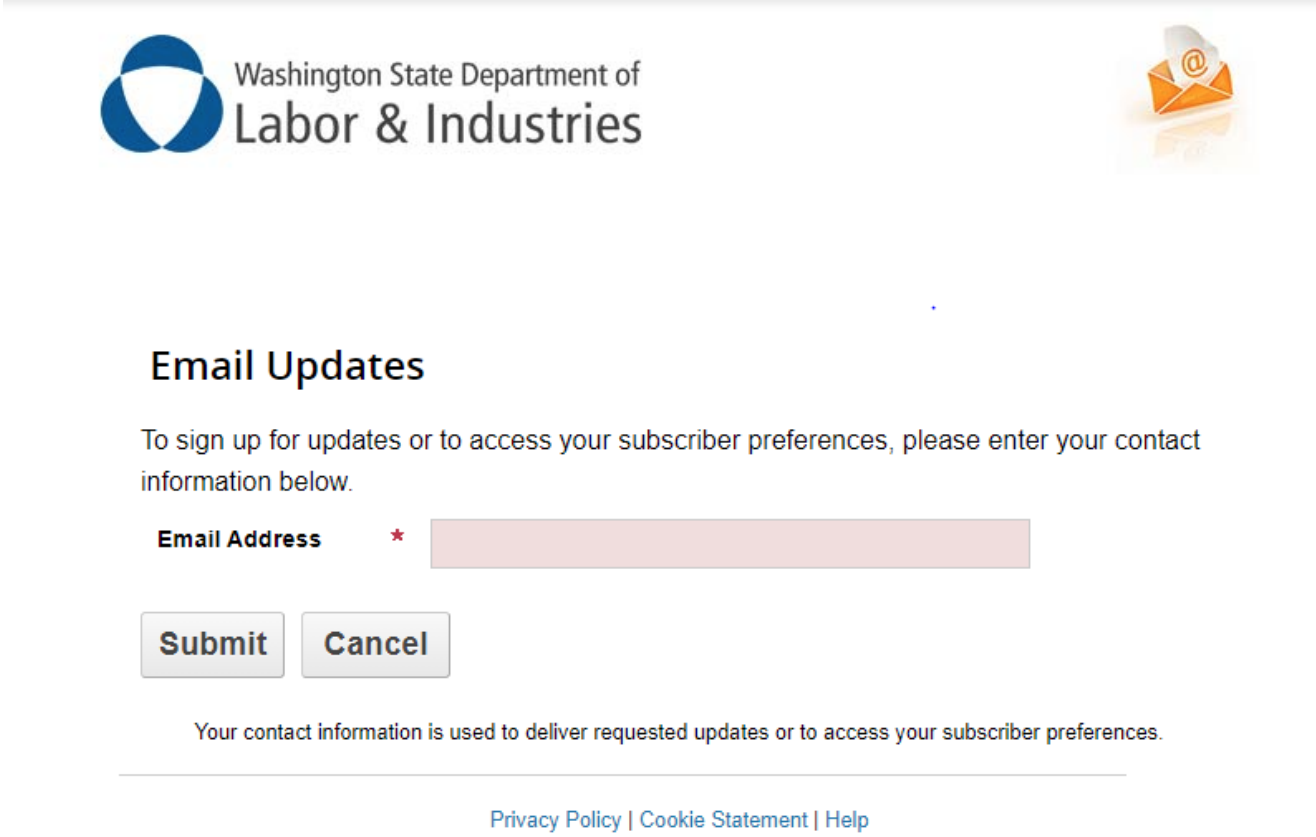
Washington State Department of Labor & Industries

Communication of Forms and Templates

WAC 296-15-425

Are You Signed Up for GovDelivery?

https://public.govdelivery.com/accounts/WADLI/subscriber/new?topic_id=WADLI_35



WAC 296-15-425

What exactly is this WAC?

Communicating to injured workers during the course of the claim.

Why Use Forms and Templates?

- Better Communication with
  - Worker
    - Provides clear information to the worker about the actions taken on the claim
  - Provider
    - Provides clear information to the provider about the actions taken on the claim
  - Department
    - Provides clear information to the Department actions taken on the claim or clear requests for action from the Department.

WAC 296-15-425

- (1) **How does a self-insurer communicate claims administration actions to workers?**
  - The self-insurer must communicate in writing using a department-developed template to inform workers of actions involving delivery of benefits.

WAC 296-15-425

(2) What is the purpose of the department-developed template?

- To provide timely and accurate delivery of benefits and prompt resolution of disputes during the course of a claim (between the allowance and closure of a claim); to promote efficient claims processing that is protective of workers and effective for employers by improving communications to workers, clarifying requirements and providing certainty of claims administration for self-insurers, and streamlining regulatory oversight by the department.

WAC 296-15-425

(3) When must a department-developed template be completed and sent to the worker?

- Within five days of a claims administrator taking action on a claim involving:

  (a) Calculation of the worker's monthly wage that forms the basis for time-loss compensation at time of payment;1

  (b) Starting*, stopping, or denying time-loss or loss of earning power compensation;

  (c) Acceptance or denial of a condition contended under the claim;

  (d) Authorization or denial of treatment requested by a medical provider with specified diagnosis and procedure codes for treatment requiring authorization under WAC 296-20-03001; or

  (e) Assessment of an underpayment or overpayment of benefits (from date of knowledge).

*When starting time-loss compensation the self-insurer must send a copy of the department-developed template and SIF-2 to the department.

WAC 296-15-425

(4) What is a department-developed template?

- A department-developed template is used by the self-insurer to inform a worker of administrative actions on the claim involving delivery of benefits. The template:

  (a) Informs the worker of the action being taken, and that if the worker disputes the action the worker should within sixty days write and ask the department to intervene to adjudicate the dispute.

  (b) Upon receipt of a dispute, the department will intervene to adjudicate the matter and issue an order in accordance with RCW 51.52.050.

  (c) If no dispute is received, then the department will not issue an order, and when the condition of the injured worker has become fixed, the self-insurer may close the claim in accordance with RCW 51.32.055 and WAC 296-15-450. If an overpayment remains unpaid at the time of closure, then upon request, the department will issue an overpayment order in accordance with RCW 51.32.240.

-When communicating the worker's monthly wage, the department-developed template will serve as a cover letter to the SIF-5A, the time-loss calculation rate notice under WAC 296-15-420.

What is Substantially Similar?

- This is defined in WAC 296-15-001
  - The text of the department's document has not been altered or deleted; and
  - The self-insurer's document has the text;
  - In approximately the same font size;
  - With the same emphasis (bolding, italics, underlining, etc.); and
  - In approximately the same location on the page as the department's document

Requesting Claim Allowance

- Submit a Claim Allowance Request (CAR)
  - SIF-2 (if not previously submitted)
  - SIF-5A for time-loss claims (must be submitted within 5 days of initial payment of benefits)
- Time Frame
  - Within 60-days of notice of a claim

Claim Allowance (CAR) and Employer Closures (EC)

- Do not request a CAR for claim allowance to the department and issue an EC closure on the same day
- Wait for the department to issue an allowance order before issuing the EC closure

Interlocutory Order Request (IR)

- Interlocutory Request (IR)
  - Must be requested within 60 days of notice of claim
  - Provides a reasonable explanation of why interlocutory order is needed
    - SIF-2 (If not previously submitted)
    - SIF-5A (TL claims)
    - All claim records

Requesting Claim Denial

- Claim Denial Request (CDR)
  - Must be requested within 60-days of notice of a claim
    - SIF-2 (if not previously submitted)
    - All claim records (excluding bills)
  - Copy must be sent to the worker
    - Can use copy of CDR
  - Must also notify the provider
    - Can use copy of CDR

Reporting & Communication Requirements Time Loss and KOS

- Within 5 days of starting time-loss compensation
  - SIE/TPA must send the Starting Compensation Benefits Template (F207-224-000) to the worker
  - SIE/TPA must also send the Calculation of Monthly Wage as a Basis for Time-Loss Compensation template (F207-227-000) along with the SIF-5A

Kept on Salary (KOS)

- Submit the Claim Allowance Request (CAR) form, and indicate the worker is KOS.
  - Report to the department when claim allowance is requested.
- Include attachment that documents the amount of time-loss the worker would have been paid.
- Send the form and the SIF-5A within five days the first time-loss would have been due.

Loss of Earning Power (LEP)

- Within five days of starting loss of earning power compensation the SIE/TPA must send:
  - Starting Compensation Benefits template (F207-224-000) to the worker and to the department.
- The SIE/TPA must also send:
  - Calculation of Monthly Wage as a Basis for Time-Loss Compensation (F207-227-000) to the worker along with the SIF-5A

Stopping Time-Loss

- Within five days of stopping time-loss benefits, the SIE/TPA must notify the worker using the Stop or Deny Compensation Benefits template (F207-225-000)

Requesting Claim Closure

- Submit a Claim Closure Request form (CCR)
  - Provide a transaction record of all time-loss or LEP payments
  - All claim records (excluding medical bills)
  - PPD schedule if necessary (If SIE/TPA closing)
- Must be submitted to the worker
  - PPD schedule, if necessary

Reporting Claim Closure

- Claims closed by the SIE/TPA
- Submit a Claim Closure Request (CCR)
  - SIF-2 if not previously submitted
  - Closing order
  - PPD schedule if necessary
- Do not close claim if you have requested claim allowance. Wait for the allowance order. Then issue closure order.

Reporting Medical Only Closures

- Transferred electronically in department format or
- By paper
  - If submitted in paper, must include the SIF-2 showing date of closure and any vocational services provided
- Must be submitted by the end of the month following closure
- Closing order must be submitted to the worker and attending provider.

- No CAR or CCR is required for MO Closures

Requesting an Overpayment Order

- Submit an Overpayment Request (OOR) form
  - Copy of Assessment of Overpayment template sent to worker.
  - Payment Ledgers
  - SIF-5A if overpayment is due to wage calculation error
  - Documentation of release/return to work
- Submit at the time of claim closure if overpayment remains uncollected.

- If you have any questions, please let us know. If you would like us to review a form for substantially similar, you can send to the department for review.

Questions

Break

Washington State Department of
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Substitute House Bill 2409

Licensing TPAs and the Certification of Claims Administrators

Washington State Department of
Labor & Industries

Agenda

- Background
- Rulemaking - new and updated WACs
- Updated systems and processes
- Next steps

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Background

SHB 2409 passed in March 2020 and Governor Jay Inslee signed it into law in April 2020.

Amended several RCWs

✓ Increased penalty amounts & gave additional guidance on penalties

Established 2 additional statutes

RCW 51.48.095 – Adjustment for Inflation

✓ Penalties under chapter 48 should be adjusted for inflation every 3 years beginning July 2023

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Background

RCW 51.14.170 – Administration of claims – Third Party Administrators (TPAs)

- ✓ Required all TPAs that are contracted by self-insured employers to manage their claims to be licensed by L&I
- ✓ Gave the department the authority to penalize TPAs
- ✓ Requires ALL individuals who manage claims for self-insured employers or their TPAs to be certified
- ✓ Mandated L&I to adopt rules to administer the implementation of law

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Project Formed

Licensing and Certification of Administrators Project (LCAP) was formed

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Rulemaking Completed

- In collaboration external stakeholders
- 3 existing rules amended
- 6 new rules
- Went into effect July 1, 2021

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Existing WACs in Alignment with RCW

296-15-001 – Definitions

- Updated definition of third party administrator (TPA)

296-15-350 – Handling of Claims

- TPA was added, so WAC now applies to self-insurers and TPAs
- All persons making claim decisions must be a certified claims manager or in the process of becoming certified
- Added “or produce an imprint on” to “legibly date stamp..”

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Existing WACs in Alignment with RCW

296-15-360 – Qualifications of Personnel – Certified Claims Administrators

- 1 year of experience managing claims under Title 51, instead of 2 years
- Test without taking Core Curriculum training through December 31, 2021
- Removed the 6 month wait prior to retaking the test if didn't pass

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New WACs

296-15-520 – Self-insured Third-Party Administrator (TPA) Licensing Requirements

- Licensed to do business in the state of Washington
- Demonstrate they can meet requirements for handling claims
- Comply with reporting requirements

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New WACs

296-15-530 – Self-insured Third-Party Administrator (TPA) Licensing Application Requirements

- Submit an application
- Provide list of employers contracted to manage claims for
- Provide list of certified claims administrators and those in process of becoming certified

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New WACs

296-15-540 – Self-insured Third-Party Administrator (TPA) Licensing Renewal Application Requirements

- Submit a renewal application
- Provide list of employers contracted to manage claims for
- Provide list of certified claims administrators and those in process of becoming certified

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New WACs

296-15-550 – Self-insured Third-Party Administrator (TPA) Duties and Performance Requirements

- Manage claims in accordance with RCWs, WACs, Policies, etc.
- Follow recognized claim processing practices

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New WACs

296-15-560 – Self-insured Third-Party Administrator (TPA) Penalties

- TPAs may be penalized
- TPAs may be directed to obtain training

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New WACs

296-15-570 – Self-insured Third-Party Administrator (TPA) License Suspension and Revocation

- A Self-Insured TPA license may become provisional, suspended or revoked

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TPAs Licensed

All TPAs managing claims for self-insured businesses in Washington State were licensed by the July 1, 2021 deadline

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Certification of Claims Administrators

Electronic option for the claim administrator certification coming in June; requirement enforcement delayed until next year - May 14, 2021

The Washington State Department of Labor & Industries (L&I) will begin offering an electronic option for the claim administrator certification test in June. During the past year, L&I was not able to offer in-person testing due to concerns over the COVID-19 pandemic and the need for social distancing. To allow more time for those who need to take the test, L&I will not begin enforcement of the July 1, 2021 requirement for claim administrators to become certified until January 1, 2022.

More information regarding the electronic option for the claims administrator certification test will be coming soon.

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Online Certification Test

- See Claims Administrator and Certification page
- Online test, no fee for test, $30 fee for the proctoring service

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Bridging the Gap Training

12-hour course held over two days. The course is designed to help claims administrators who are new to Washington state workers' compensation learn to use the resources available to answer questions about workers' compensation. It will also provide an overview for those who may be gearing up to take the Self-Insurance Claims Administrator Test.

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Register Now

COST: **This is no cost to you!**

Credits have not been awarded; they will be reviewed prior to the course.

Register now

Nov. 1: 8 a.m. to 3 p.m. & Nov 2: 8 a.m. to 3 p.m.
https://lni-wa-gov.zoom.us/webinar/register/WN_T3fucChpQ3uvNQ5xpQKwHg

Nov. 15: 8 a.m. to 3 p.m. & Nov. 16: 8 a.m. to 3 p.m.
https://lni-wa-gov.zoom.us/webinar/register/WN_h0hQFIN2Q4-W1_MoMq9xwA

Dec. 1: 8 a.m. to 3 p.m. & Dec. 2: 8 a.m. to 3 p.m.
https://lni-wa-gov.zoom.us/webinar/register/WN_gWp2fqDNRPiw0pvAGgERNg

Washington State Department of
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Updating Business Processes & Technical Systems

In process of updating technical systems such as:

- Self-Insurance Certified Administrator Tracking System (SICATS)
- Self-Insurance CORE Assignment Manager (SICAM)
- Other internal L&I systems

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Next Steps

- Reaching out to self-administered employers
- Reaching out to in-training claims administrators
- Putting process in place for adjusting penalty amounts for inflation every three years starting July 1, 2023 based on the Seattle Consumer Price Index for urban wage earners and clerical workers

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Questions?

Communication of changes through GovDelivery. Subscribe for updates at www.public.govdelivery.com

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Update 2021

Self Insurance Program, Compliance

Penalty Changes

- Penalties fees increased from $500 to $1000
- Every 3 years fees are adjusted based on the Consumer Price Index
- Penalties can now be assessed against a Third Party Administrator

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2021 Key Changes

Self Insurance Program, Certification Services

Why Did the Certification Rules Change?

The purpose of the changes was to update the rules for the financial qualification and maintenance of self-insurance certification, so that the rules were consistent with modern business practices.

Changes to Self Insurance Qualifications (WAC 296-15-021)

FROM:

- Assets = $50M
- Fixed ratio tests
- No reinsurance requirement

TO:

- Net worth > $25M or
- Revenues > $50M or
- CW WC > $1M
- Credit Monitoring
- Reinsurance requirement

Changes to Surety for private entities (WAC 296-15-121)

- No changes to L&I's surety requirement calculation
- Surety requirements will increase based on credit monitoring results and at the discretion of the Director
- Continue to allow employers to submit a report from an independent qualified actuary

Changes to surety for private entities non-SEC (WAC 296-15-121(1)(f))

Surety requirements for non-SEC reporting companies will be increased for failure to produce timely audited financial statements

Changes to minimum surety

- Prior minimum = $755K

- New minimum = $1M
- New minimum for public entities = $500K
- Amounts will be adjusted every 5 years based on CPI

Changes to Surety for public entities (WAC 296-15-151)

- Surety must cover 125% of the expected WC claims costs in the next year or subject to the minimum of $500K
- Surety requirements will increase based on credit monitoring results and at the discretion of the Director

Changes to Surety for groups (WAC 296-15-161)

- Requires actuarial reports to focus on the adequacy of rates, reserves, and contingency reserves
- Removed the 15% runoff test and the reserves be held in cash

Changes to reporting requirements (WAC 296-15-121(1)(f) 296-15-221 (4)(c)

- Private non-sec reporting companies have to provide audited financial statements within 6 months of their standard fiscal year end close
- Failure to meet this standard will increase surety requirements and/or decertification

Washington State Department of
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Health Emergency Labor Standards Act (HELSA)

ESSB 5115 and 5190

New Laws

On May 11, 2021 Governor Jay Inslee signed Engrossed Substitute Senate Bill (ESSB) 5115, also known as the Health Emergency Labor Standards Act (HELSA), and ESSB 5190 into law making them effective immediately

When Do They Apply?

- ESSB 5115 and 5190 provide presumptive coverage during any current and future public health emergencies

ESSB 5115 Effective Date

- Provides presumptive coverage to frontline workers
- Effective the date it was signed on May 11, 2021
- Exposures and claims filed on or after

  May 11, 2021

ESSB 5190 Effective Date

- Provides presumptive coverage to health care workers
- ESSB 5190 presumption applies retroactively to February 29, 2020, when Gov. Inslee declared a state of emergency

Presumptions End

Presumptive coverage will end when the public health emergency order is lifted by the Governor

What's Changed

- Claims under the presumption are considered occupational disease claims in accordance with RCW 51.08.140
- Clarifies and sets standards for how claims are determined, managed, and sets reporting requirements
- Provides for time-loss compensation for the 1st 3 days after the date of manifestation

ESSB 5115

- Provides coverage specifically for “Frontline” employees
- “Frontline” employees must provide verification to the department and the SIE that they contracted the disease
- Presumption may be rebutted by the employer by a preponderance of evidence
- Coverage exists even if the exposure is by proxy

Who is a Frontline Worker?

- Frontline workers are those employees listed in the law who interact with the general public or other employees in the course of their work during the public health emergency

Examples of Frontline Workers

- First responders
- Farm workers
- Food processing workers, manufacturing, distribution, and meat packing workers
- Janitorial, maintenance, and food service workers at medical facilities
- Drivers and operators in mass transportation services
- Child care workers
- Retail workers

Examples of Frontline workers

- Hotel, motel, or other lodging type workers
- Restaurant workers
- Home healthcare aides
- Corrections officers or correctional support staff
- Educational employees
- Employees of institutions of higher education
- Public library employees

Rebuttal

- Preponderance of evidence that:
  - Disease wasn’t contracted through work
  - Employee was working from home or another location, or was on leave for a period of time prior to contracting the disease

ESSB 5190

- Provides coverage specifically for health care employees
- Also covers exposure only claims
- Presumption may be rebutted by the employer by supplying clear and convincing evidence

Who is a Health Care Worker?

- Worker at any health care facility or other organization that provides emergency or medical services and who has or likely has had direct contact with any person who has been exposed or tested positive to the disease

Time-Loss Benefits

- The Date of Manifestation (DOM) remains not payable
- The first three days are payable under the presumption, regardless of the amount of time missed from work

Time-Loss Benefits

If leave or similar benefits are paid to the employee as part of a federal or state program for these employees during the public health emergency, time-loss benefits are not payable for the same period of time covered by the federal or state program

New Reporting Requirement

If an employer receives notice of potential exposure to the infectious or contagious disease, the employer, within one business day, must:

- Provide written notice to all employees, and the employers of subcontracted employees who were on the premises
- Be in the manner normally used to communicate information
- Be in English and the language understood by the majority of employees

Non-Presumption COVID-19 Claims

- Can be any employment type

- May be allowable if the worker is directed to quarantine by a medical professional or public health official, if there was a specific event of exposure in the course of employment, and if there is a greater than normal risk to exposure of the disease

Benefit Matrix

	ESSB 5190 – Healthcare workers	ESSB 5115 (HELSA) – Frontline workers
Effective date	Retroactive to DOMs on or after 2/29/2020	DOMs on or after 5/11/2021
Qualifies if:	Positive or quarantined for COVID	Positive for COVID
Time-loss for 1st 3 days after DOM payable (without having to be off work on the 14th day)	Yes	Yes
Rebuttal	Clear and convincing	Preponderance

COVID-19 Vaccine Reactions

- A worker may file a claim but there is no presumption of coverage
- Claims will be allowed for employees who have a reaction to the vaccine when it is required by the employer and/or by government order, rule or law as a condition of employment
- Other claims will be evaluated on a case-by-case basis

Premium Assessments and Employer's Experience Rating

- Self-Insured employers may deduct the costs from the total claim costs reported for administrative assessment purposes

- These claims will not be included in the costs used to calculate experience rates of State Fund employers

Worker Safety and Health Protections

- Division of Occupational Safety and Health (DOSH) is leading the work to implement worker safety and health requirements and protections including:
  - Reporting of outbreaks in the workplace
  - Protection of high-risk employees
  - Notifying employees of potential exposure in their workplace

Questions on Worker Safety and Health

For questions about worker safety and health requirements, email:

EyeOnSafety@Lni.wa.gov

Resources

For questions about workers' compensation HELSA - ESSB 5115 or ESSB 5190 requirements, email:

HELSA@Lni.wa.gov

Resources

- Claim Adjudication Guidelines

- Online "Common Questions about Presumptive Coverage for Health Care and Frontline Workers"

Questions?

Email SITrainerQuestions@LNI.WA.GOV

Washington State Department of
Labor & Industries

Thank You for Attending Update 2021