

CONCISE EXPLANATORY STATEMENT
2024 Premium Rates

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

The date of adoption for this rule: November 30, 2023

The effective date for this rule: January 1, 2024

I. Purpose of rulemaking:

This rule adoption amends the tables of classification base premium rates, experience rating plan parameters, and experience modification factor calculation limitations for the workers' compensation insurance program for calendar year 2024. Classification base rates were updated to align with expected losses. Labor & Industries (L&I) adopted a 4.9% overall average premium rate change.

Washington law provides that rates should be adjusted annually to reflect the hazards of each industry and in accordance with recognized workers' compensation insurance principles.

Washington employers continue to deal with uncertainties associated with the pandemic and the global economy. In light of that, L&I is adopting an overall average rate increase of 4.9% to ensure adequate premiums to cover expected costs of 2024 claims. This increase is below the indicated break-even rate and consistent with our rate-making principle of keeping rates steady and predictable. This rate increase is required to partially account for three consecutive years of higher-than-normal increases in the states' average wage. L&I is able to minimize the increase for this upcoming year thanks to previous investment earnings that benefit the workers' compensation contingency reserve (surplus).

The adoption is also notice that the Director intends to transfer the amount of the accident and medical-aid funds combined that exceed 10% of funded liabilities as required by RCW 51.44.023.

The adoption also repeals WAC 296-17-871 Director's discretion for incurred losses on claims with vocational plans as this rule became obsolete with the 2015 amendment to RCW 51.32.096 Vocational rehabilitation benefits and options – Advisory committee – Procedures – Requirements – Definitions – Costs. The amendment to RCW 51.32.096 clarified that the vocational costs paid from the medical aid fund may not be charged to the State Fund employer's cost experience, which was the intent of WAC 296-17-871 when created in 2010.

2. Differences between the rule as adopted and the proposed rule:

We removed an error that was inadvertently included in the proposed WAC 296-17-875 Primary losses for select claim value table. The error removed was 24,888 total loss after deduction; and 25,000 primary loss. The need for the correction was brought to our attention from written comments received during the public comment period.

3. Comments on proposed rule:

The public comment period for this rulemaking began September 19, 2023 and ended October 31, 2023. We held three public hearings. The Tumwater hearing on October 26 was held in-person and provided a virtual option. The Spokane hearing was held on October 27 in-person only; and the Yakima hearing was held on October 31 in-person only. A total of 14 non-L&I people attended the hearings with four testifying. We received two written comments.

<u>Date</u>	<u>Number Attended</u>	<u>Number Testified</u>
October 26, 2023	12	4
October 27, 2023	0	0
October 31, 2023	2	0

Below is the summary of the comments we received, and L&I's response. We heard from employer representatives opposing the rate increase; and from a labor representative in support.

Contingency Reserve

Comment Received: Combined with last year's adopted rate increase, L&I rates will have gone up over 10% over the last two years. More concerning is the trajectory of the "indicated" rate increase – which shows the true cost increases in the L&I system before the Department "buys down" these rate increases with funds from the contingency reserve. These double-digit indicated rates are not sustainable and, without the ability to raid the contingency reserve fund that has been largely built upon exceptional investment results, we would be staring at a shockingly high rate increase each year. By continually buying down rate increases with investment windfalls, we are masking the true costs of our expensive workers' comp system and potentially setting ourselves up for a financial reckoning in the years ahead.

Comment Received: This is the fourth year in a row that L&I has proposed a rate subsidy. We're concerned about the longer term health of the reserve. Every time we take less than the indicated rate it creates pressure down the line. We do think this is part of the plan and so that's okay. But for now, we support the proposal, but worry about continuing in the future.

Department Response: The overall rate increase needed to breakeven for 2024 rates is 9.9%. Had Labor & Industries (L&I) not used available reserve funds, we would likely have proposed a 9.9% general overall rate increase.

The adopted 4.9% overall increase is below the overall rate 9.9% increase indicated by our actuaries to pay for claims from workers injured during 2024. The steady and predictable rate increases in the last two years have been in response to the higher-than-normal wage increases to the state's average worker wage in three of the latest four years realizing that wage inflation drives large portions of our costs. Also, because of higher than average earnings in the State Fund's investments in these last four years the State Fund was able to financially sustain these several years of premiums being below cost levels.

COLA

Comment Received: Change the RCW that mandates Cost of Living Adjustments (COLAs) be driven by the states average wage to a more predictable, equitable, fair, and accurate inflation measure such as CPI. On workers compensation claims and pensions, COLAs have been volatile over the years; sometimes over 10% or higher and certainly not in line with inflation. This methodology for calculating COLAs is unique to Washington and not standard insurance practice. We understand that the COLA calculation is statutory, and must be followed by L&I, but it's clearly not reflective of cost of living increases and unduly drives rates upward. We welcome the Department's thoughts and inputs on the development of a legislative proposal that protects injured workers' buying power and at the same time more accurately reflects cost of living increases.

Department Response: COLAs have been identified as a topic for the Workers' Compensation Advisory Committee's Finance Committee to discuss.

Additional Costs for Business

Comment Received: While this may seem like a small increase, 4.9%, Washington is already an expensive state to do business. And unfortunately this proposed 4.9% average rate increase in workers' compensation insurance will only make it more expensive for employers who are dealing with extraordinary inflationary pressures. Keep in mind that this is an average rate increases across the industry sectors. For some business, this increase could be as high as 20%. Others there may be no increase.

Department Response: The adopted 4.9% overall increase is below the overall rate 9.9% increase indicated by our actuaries to pay for claims from workers injured during 2024. The steady and predictable rate increases in the last two years have been in response to the higher-than-normal wage increases to the state's average worker wage in three of the latest four years realizing that wage inflation drives large portions of our costs. Also, because of higher than average earnings in the State Fund's investments in these last four years the State Fund was able to financially sustain these several years of premiums being below cost levels.

Suggestions for Improvements

Comment Received: Suggestions for improvement to amend the Independent Medical Exam

(IME) recording legislation that was effective July, 2023 to:

- Stipulate IME panels can also record the exam when workers are going to record; and
- Require workers to give notice of the intent to record within 7 days of receipt of notice that there will be an exam, rather than 7 days-notice before the exam date.

Department Response: We continue to gather data and evaluate the impact of this new legislation on our system. The notification timeline of 7 days is one of many concerns our customers and stakeholders have raised that will be analyzed through a data review and subsequent discussions.

Comment Received: We have ideas for administrative efficiencies which do not require legislation, but would help facilitate more timely adjudication and decreased delays in the system, reducing system costs and positively impacting future rates.

Department Response: Your operational recommendations are appreciated and will be considered by the department as we continually strive to remove delays and complexities out of our system.

Comment Received: We suggest the department restore vocational counselors' ability to call a provider for a response to an employer job description to help expedite return to work. Department vocational staff cannot make these calls any longer. This administrative change would support State Fund employer return to work efforts to expedite their own light duty accommodation with their employee when there is no dispute versus adding delays and costs for a private vocational counselor to duplicate the employer's efforts when all that is needed is a phone call.

Department Response: We do not support this change because:

- Department staff, vocational counselors, and retrospective rating Third Party Administrators (TPAs) all struggle to get some medical providers to respond promptly. Facilitating a signature requires understanding the provider perspective, getting the worker and employer on board, and some tenacity.
- It was found that providing similar services by different people (TPA voc, early return to work voc, and then private sector voc) made a complicated and confusing process even more complicated for workers. Workers in this scenario had worse outcomes than those that received just one consistent method of vocational services.

Comment Received: As the number of consultations have increased due to the unintended impact of the IME legislation, we suggest that LNI develop two new form letters as tools to help claims managers improve the quality of the consultation reports they receive. Currently, consultations are automatically paid for whether or not the consultation report addresses all the issues or is useful in the adjudication of the claim. The first form letter would address when the department has advance notice of a consultation to ensure the consultation report addresses all questions on the claim and reviews prior medical records. The second form letter would address consultations that LNI has no advance notice of and would allow the LNI

claims manager to select the same pre-canned type of questions as the first form letter and request review of any pertinent prior medical information.

Department Response: The department is always looking for ways to streamline processes and supports the suggestion of creating standardized letters for claim managers to send to consulting providers, with options for specific questions depending upon the particular claim situation. Having a standardized letter(s) could save claim managers' time and it could help with consistency in regard to the questions.

In Support

Comment Received: We are in support of the 4.9% average rate increase for 2024, which is well below the indicated rate and the rate according to L&I's actuaries. We believe that this decision is firmly in line with initial planning by L&I in consultation with the labor and employer communities in Washington state toward building up reserves that are available at stabilized rates making them applicable during periods of economic turmoil. This has allowed Washington state to have a very high quality of benefit for injured workers, ranking 7th in the nation, while only ranking 224th in the nation for workers' compensation premiums, and 38th in the nation for those premiums paid by employer in Washington state. Very high benefits, very low employer costs. This is only possible because workers contribute to the system, which is very unique in the United States.