

CONCISE EXPLANATORY STATEMENT (CES)

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

I. Purpose of rulemaking:

The purpose of this rulemaking is to: implement requirements of Engrossed Substitute Senate Bill (ESSB) 6293 which allows public and private colleges to create unpaid student volunteer programs in for-profit or non-profit businesses, and allows those businesses to elect medical aid coverage for student volunteers and unpaid students participating in the program. Providing employers the opportunity to elect medical aid coverage for student volunteers and unpaid students in experience-based activities will encourage more employers to participate in these school-sponsored programs.

Also, private colleges are now able to elect medical aid coverage for qualifying students volunteering for the college. (Past law required state colleges to cover volunteers serving the college, but allowed only charitable private organizations to elect coverage for volunteers.)

This legislation also created a means for all entities with coverage for volunteers, student volunteers, or unpaid students to cap reporting at 100 hours per volunteer per calendar year. This type of reporting has not previously been an option for employers and L&I has designed rules to implement this reporting and premium change.

The date of adoption for this rule is September 6, 2016.

The effective date for this rule is October 7, 2016.

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

Clarifying words were added to Classification 6901 describing unpaid students as recommended by stakeholder. The meaning is unchanged.

3. Comments on proposed rule:

The public comment period for this rulemaking began June 21, 2016 and ended August 3, 2016. A public hearing was held on August 3, 2016; no one attended.

We received and used a classification language suggestion from a stakeholder who had testified in support of the legislation during the legislative process. Twelve written responses and several phone calls were received from stakeholders inquiring about whether action was needed by the stakeholder, whether the new 100 hour reporting method would benefit their organization, which individuals should be considered reportable volunteers, or regarding specific tort liability concerns. Questions and concerns were addressed by L&I staff in a timely manner by phone call or email. A summary of comments/questions and responses is below.

Comment/Question	Department Response
I suggest clarifying the definition of unpaid student by adding the underlined : "Receiving credit towards completing the school program, <u>a certificate or degree from an institution of higher education</u> ".	Thank you. We amended the rule language as suggested.
Are we required to use a standardized volunteer registration form when we register our volunteers?	No. While statute requires you to register your volunteers and rules require you to maintain registration records of each of your volunteers, you may use a form of your own choosing. L&I does not prescribe a form.
How does this affect Self Insured employers?	This law impacts Self Insured employers in the same ways as State Fund employers. It provides the opportunity for SI employers to elect medical aid coverage for qualifying student volunteers and qualifying unpaid students.
We are a state agency and have several volunteers helping out. There are approximately 700, with some very active and others occasionally active. Do volunteers that represent religious activities count? We also have groups that assist with clothing and housing and other activities in the community. Do any or all of these activities count?	Yes, all volunteer activities count. State agencies must provide coverage and report all time worked by all volunteers, according to RCW 51.12.035 Volunteers.
We already report our volunteers. Do we need to do anything differently? Do we need to file a new Application for Elective Coverage form?	No, unless you choose to report 100 hours per calendar year per volunteer, or you decide to cover qualifying student volunteers or qualifying unpaid students. If you wish to choose the 100 hour reporting method, please contact your account manager. If you decide to cover qualifying student volunteers or qualifying unpaid students, please complete a new Application for Elective Coverage.
What is the cost for volunteer coverage?	For 2016, the cost is seven (7) cents per hour worked. If you choose to report using the 100 hour reporting method, the cost is \$7 per volunteer per calendar year. You must use your chosen reporting method for reporting all volunteers in the entire calendar year, but you may change your reporting method at the beginning of each year, if you wish.

Comment/Question	Department Response
<p data-bbox="235 262 795 367">What is the risk in proceeding with this new reporting method vs. old method with regard to tort liability?</p> <p data-bbox="235 399 795 871">What is the rule for volunteers who are injured on the job? We are a nonprofit with a 501(c)3 designation and have volunteers. When one is injured and then cannot go to their regular job, they can't collect Loss of Earning Power benefits (LEP). Our attorney states that the only recourse the injured volunteer has is to sue the 501(c)3 entity they volunteered for. It seems strange that they can't apply for LEP. This seems to pose a problem for recruiting volunteers, knowing if they volunteer, and lose their income, they are out of luck.</p>	<p data-bbox="820 262 1380 504">Unlike regular workers' compensation coverage, volunteer coverage has never provided protection from tort liability. If you are concerned about tort liability, it may be wise to check with your legal counsel and/or your general liability insurance company to see what your options are.</p> <p data-bbox="820 535 1380 672">Volunteers are covered for medical aid costs only. Time-loss and loss of earning power (LEP) benefits are not allowed since no wages are paid to the volunteer.</p> <p data-bbox="820 703 1380 934">Premiums for this coverage are inexpensive because time-loss and LEP benefits are not considered in the pricing. Since volunteer involvement can be vital to an organization's activities, providing medical aid coverage can encourage recruitment and volunteer participation.</p>