



2022 Agency Request Bills

September 2021

Summaries

The Department of Labor & Industries (L&I) is requesting four proposals in the 2022 legislative session.

1. **Z-0301.2 – Adding psychologists for mental health only claims to the list of those who can act as an attending provider**

Current law includes a list of medical specialties/providers allowed as attending providers (APs) for workers' comp claims. The AP is responsible to file the claim, certify time-loss, coordinate care, determine work restrictions, and recommend when a worker has reached maximum medical improvement.

Expansions in workers' comp to cover work-related mental health claims where there is not also a physical injury or illness has exposed a shortage of appropriate providers available to assist these workers. Current law limits the type of provider who can act as an Attending Provider (AP) on these claims to include only physicians and licensed registered advanced nurse practitioners. Excluded from the list are psychologists, even though these are often the provider treating claims such as Post Traumatic Stress Disorder (PTSD) and other mental health-only claims.

L&I is seeking to allow psychologists to act as the Attending Provider for mental health-only claims. L&I is also seeking to make some housekeeping changes, for example, explicitly naming chiropractors and naturopaths on the list of providers that can be the AP in their capacity as physicians.

2. **Z-0322.3 – Concerning attorney and witness fees in industrial insurance court appeals**

Under workers' comp, whenever a party to a claim disagrees with a claim decision, they may appeal to the Board of Industrial Insurance Appeals (BIIA). If any party disagrees with the decision of the BIIA, they can appeal to the Superior Court, Court of Appeals and Supreme Court. Typically, the losing party pays their opponents' attorney fees and costs.

In workers' comp appeals, though, when a state fund employer or retrospective rating group appeals a decision of the BIIA to a higher court and loses, L&I must pay the worker's attorney fees and costs. This is true even when L&I is aligned with the winning party on the decision being appealed.

L&I is seeking to require the appealing party to pay costs and fees when they lose. This would not change the circumstances when a worker covers appeal costs, but it would require state fund employers and retro groups to cover costs when they appeal in court and lose.

3. **Z-0306.2 – Requiring an employer to reimburse employee fees when a paycheck is dishonored by nonacceptance or nonpayment**

When an employee deposits their paycheck into a bank account, they expect the funds they've earned to be available for this use. If, however, their paycheck bounces, the worker is likely to be charged Non-Sufficient Funds (NSF) fees. Most employees in this situation have little meaningful recourse. While L&I can assist the worker to collect wages that are owed if the worker files a wage complaint, the department cannot order the employer to cover costs incurred by the worker for NSF fees or penalties.

L&I is seeking authority to include in a wage complaint reimbursement to the worker for NSF fees charged the worker when their paycheck bounces.

4. Z-0321.4 – Adding references to contractor licensing laws in workers' compensation, public works, and prevailing wage statutes

In 2020, the legislature made major revisions to plumber contracting requirements, including creating registration requirements specifically for plumbing contractors and moving those requirements from the general contractor law (RCW 18.27) into the existing plumbing chapter (RCW 18.106). When that move was made, references in workers' comp, public works and prevailing wage laws that applied to plumbing contractors were not included, resulting in a series of references that no longer apply to plumber contractors.

This technical change would add references to the new plumbing contractor law and restore prior requirements for workers' comp, public works and prevailing wage law. A few examples of the technical changes are:

- responsible contractor and subcontractor laws for public works, RCW 39.04.350 and RCW 39.06.020, need to have language added to include verification of the new plumbing contractor license (18.106) in the same way the present law requires confirming the contractor is registered under the prior contractor registration law (18.27).
- use of liens for collection of unpaid prevailing wages, application of contractor debarment, and distinguishing between an independent contractor and a covered worker for purposes of prevailing wage would again be applied to the new plumbing contractors;
- criteria to determine independent contractor status for purposes of workers' comp would include reference to new plumbing contractor; due diligence criteria to avoid prime contractor liability would be updated; requirements for out of state employers to cover workers in Washington when not included in a reciprocal agreement would reflect new plumbing contractor; some record requirements; and stop work orders for failing to provide workers' comp coverage.

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