

# Employers' Guide to Self-Insurance in Washington State



The information in this publication is current as of the publication date. Every attempt is made to keep the information up to date. Changes that occur periodically as a result of new legislation, administrative rule changes or court hearings will be included in subsequent printings.

**Note:** We use the following terms interchangeably in this publication:

- Workers' compensation and industrial insurance
- Employee and worker
- Department of Labor & Industries, Labor & Industries, and L&I

In this document, "you" refers to a self-insured employer or an employer considering applying for self-insurance.

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# Introduction

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This guide is for employers that are currently self-insured or are interested in becoming self-insured. This information is provided as a general guide; we hope that it helps you understand the processes and responsibilities involved in self-insuring. However, this publication is not a legal interpretation of the law.

Washington State is a “no fault” industrial insurance state. The Washington State Department of Labor & Industries (L&I) is the agency responsible for administering the state’s workers’ compensation laws.

Self-insurance is a unique program in which the employer provides workers’ compensation benefits to injured workers. L&I oversees the provision of benefits by the self-insurer to ensure compliance with rules and regulations. We also review the financial strength of the self-insurer to ensure that workers’ compensation obligations can be met.

For more information, contact L&I’s Self-Insurance Section at 360-902-6863 or PO Box 44891, Olympia WA 98504-4891.

## Section 1: What is Self-Insurance?

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Workers' compensation insurance provides relief to workers from injuries or illness sustained in the course of their employment and is required of virtually all employers in Washington State. Employers in Washington must obtain coverage either through the state industrial insurance fund or by qualifying to self-insure.

As a self-insured employer, you must cover the costs of an on-the-job injury or occupational disease. Employees have the same rights and responsibilities as other workers in Washington state.

Self-insured employers have a long-term obligation to pay benefits during the lifetime of their claims. This commitment remains the employer's responsibility whether their self-insurance certification continues to be in effect or is surrendered.

## Section 2: Getting Certified to Self-Insured

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To qualify for self-insurance, you must meet certain thresholds for stability, safety, and financial sufficiency. All employers applying for self-insurance must meet all of the following criteria outlined in (WAC 296-15-021):

- **Stability** — Been in business for three years prior to applying without any substantial changes in ownership, structure, or operations.
- **Safety** — Have a written accident prevention program in place in accordance with DOSH standards in Washington State for at least six months prior to making your application.
- **Financial Sufficiency** — You must have one of the following:
  - Have a net worth of at least 25 million dollars.
  - Have a revenue of at least 50 million dollars.
  - Have a national annual workers' compensation premium payments or loss costs over one million dollars.

In addition to the above, we review financial data as well as your safety program after you submit an application. In order to review your financial data, it will depend if your business is publically traded or privately held. We may require two years of audited financials to make a financial determination.

- **Publically traded** — Your credit analysis shows a credit rating of investment grade or higher (Moody's Baa3 or higher, Standard and Poor's BBB- or higher).
- **Privately held** — Your credit analysis shows a credit rating of investment grade or higher (Moody's Baa3 or higher, Standard and Poor's BBB- or higher) as determined by Self-Insurance credit rating procedures.

Regardless of public or private, we require your business to obtain excess insurance (also called reinsurance). While we do not require a minimum excess layer, a self-insurer may only reinsure up to eighty percent of its liability (WAC 296-15-121(6)).

You must also attend a quarterly onboarding training to better understand your responsibilities

as a self-insured employer. Reach out to Certification Services for the scheduled dates to attend.

Remember, it is your responsibility to determine if a self-insurance program is in your best economic interest.

### How long does certification take?

The application process can take months to complete and coincides with the calendar quarters.

### Required documentation

You must submit the following documentation with your application for self-insurance:

- A check issued to L&I in the amount of the application fee.
- A copy of the written accident prevention program for each organization listed on the application. If more than one company is listed on the application, a separate written accident prevention program is required for each company.
- A list of all subsidiaries or divisions doing business in the state, including:
  1. A list of the physical location of all Washington operations including subsidiaries.
  2. A contact person and phone number at each location. This person must be familiar with the written accident prevention program for that location.
  3. The number of employees at each physical location.
- The name and qualifications of the contact person you are listing on your application.
- The name and qualifications of the safety contact person you are listing on your application.
- The name and qualifications of the individual you are designating to process the self-insured claims within the organization, including the date that L&I certified the individual, or the name and qualification of the third-party administrator selected to process its claims.

## **L&I's process for certification**

L&I staff will review the effectiveness of your accident prevention program at L&I selected locations. We will also analyze your financial capabilities, based on financial information provided with your application.

## **What happens if an applicant does not meet all requirements?**

If an employer's accident prevention program, financial capabilities, or claims administration capabilities do not meet the requirements, L&I will deny the application.

If certification is denied for a safety concern, you must correct any deficiencies and have the corrections in place for six months before reapplying. If certification is denied for a financial concern, you can reapply after your next audited financial statement is available.

## **Initial requirement for surety**

Before you obtain your certificate to self-insure, you must provide surety, financial security for the fulfillment of your obligations, at the level that L&I establishes. L&I will set the initial requirement for surety for a self-insured employer at the highest of the following:

- The annual level of premiums the employer would pay into the state industrial insurance fund.
- The average of the last five years' developed incurred costs to the state industrial insurance fund for the employer and its subsidiaries.
- The minimum surety as determined annually by the department. The minimum surety is the average total cost of one total permanent disability award and set by L&I.

The employer may submit an analysis of its projected liabilities prepared by an "independent" actuary. L&I can accept or reject this analysis.

## Section 3: Finalizing Your Certification

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### Providing surety

The employer must provide surety at the level established by L&I. This may be in the form of a surety bond, or cash or governmental securities placed in an L&I-approved escrow depository. Or, if the employer has a net worth in excess of \$500 million, a letter of credit can be provided. All surety documents must be issued on the correct L&I form and be received prior to the certification date.

### Documenting claims administration

If you plan to use a licensed third-party administrator to process your claims, you must provide a copy of the signed service contract. This copy of the contract may omit only the provision dealing with fees.

If you plan to self-administer your claims processing, you must provide proof that the individual selected to administer Washington claims is certified by L&I.

### Acknowledgment of responsibility

You must provide an *Acknowledgment of Self-Insurance Responsibility* form signed by an authorized representative.

### Copy of any excess insurance policy

You must provide a copy of the policy which includes the endorsements required for Washington prior to the certification date.

### Pay any outstanding balances

If any balance is due to the state industrial insurance fund, you must satisfy it in full prior to becoming self-insured.

### When all requirements are completed

L&I will issue a Certificate of Self-Insurance that signifies that the employer has qualified to self-insure its Washington workers' compensation liabilities. One certificate will be issued which not only covers the certified employer, but any and all of its subsidiary operations in which the self-insurer

has at least 50% ownership and/or financial controlling interest. For certification purposes, all these entities will be considered as one employer, with one workers' compensation account number.

### Notifying your employees

The employer is responsible for notifying each of its own employees as well as employees of its subsidiaries what their rights and obligations are as an employee of a self-insured company. Within 30 days of hire, you must provide each of your employees with a *Workers' Compensation Filing Information* form (F207-155-000). Copies of this form can be found online at [www.Lni.wa.gov/go/F207-155-000](http://www.Lni.wa.gov/go/F207-155-000). Forms are available in English and Spanish.

You must also display a reasonable number of *Notice to Employees — If a Job Injury Occurs (Self-Insured)* posters (F207-037-909) within each workplace. These posters indicate who a worker should notify in case of a job injury and clarify that the employer is self-insured. Posters can be ordered online at [www.Lni.wa.gov/RequiredPosters](http://www.Lni.wa.gov/RequiredPosters). Posters are available in English and Spanish.

Finally, you must make sure an adequate supply of claim filing forms, the *Self-Insurer Accident Report*, (SIF-2), are available to your employees upon request. The SIF-2 form is available in either printed or electronic format. The printed SIF-2 arrives with the claim number on the form. If you order the electronic version, you will be assigned a block of claim numbers to enter onto the form yourself.

You can order the SIF-2 at [www.Lni.wa.gov/go/F207-228-000](http://www.Lni.wa.gov/go/F207-228-000). Type in the required content, and follow the instructions to submit an online request. If you have questions about ordering the SIF-2, call 360-902-6898.

SIF-2 forms are available in nine languages. You are responsible for helping non-English speaking employees complete the form. Instructions for completing the SIF-2 are available in other languages, and can be accessed online at [www.Lni.wa.gov](http://www.Lni.wa.gov).

## Section 4: Reporting Requirements

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### Filing quarterly reports

As a self-insured employer, you must report claim costs and worker hours quarterly to L&I. Each quarter L&I will send you a copy of your quarterly report to complete.

### Other required reports

Annually, you must submit the below reports to L&I:

- Annual Report (SIF-7) showing the amount of claim payments and reserves. L&I uses this data to determine the surety requirement annually.
- Audited financial statements prepared by an independent certified auditor.

### What happens if a report is submitted late?

If a self-insured employer fails to submit any of the above reports by the due date, L&I will assess a penalty. Interest will be assessed for each day that the quarterly report is delinquent. If an employer is habitually late in submitting its reports, self-insurance certification may be withdrawn.

### Reporting changes in business structure

If a self-insured business changes its business structure, is acquired by another organization, sells either all or a portion of its operations, or purchases another organization, they are required to report this change in writing to L&I per WAC 296-15-221.

### Reporting claim data via the Self-Insurance Electronic Data Reporting System (SIEDRS)

SIEDRS is a computer system that collects claim data electronically from self-insurers. All self-insurers must send claim data to SIEDRS at least once a month, in the required format. This electronic reporting is in addition to other existing claim reporting requirements.<sup>1</sup> More information about SIEDRS is available online at [www.Lni.wa.gov/SIEDRS](http://www.Lni.wa.gov/SIEDRS).

### Reporting claim data via the Self-Insurance Medical Bill Electronic Data Interchange (EDI)

The Self-Insurance Medical Bill Electronic Data Interchange (EDI) is a system that electronically collects data about the medical bills paid on self-insured claims. All self-insurers must report medical bill data via EDI in the required format. This EDI reporting is in addition to other existing claim reporting requirements. More information about EDI is available online at [www.walniedi.info](http://www.walniedi.info).

1. Claim reporting requirements for self-insured employers are outlined in Chapter 296-15 WAC.

## Section 5: Quarterly Assessments

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Based on the information reported quarterly, a self-insured employer pays the following assessments to the Department of Labor & Industries:

1. **Administrative Assessment** — Pays for the operations of the self-insurance section and the other departmental and agency services that are provided to self-insured employers. This assessment is based on the claim payments made during the quarter (this includes any payments made by the self-insurer, as well as any payments made by the state fund for any total permanent disability payments, or any claim payments for claims occurring prior to becoming self-insured). The rate is determined on a fiscal-year basis.
2. **Second-Injury Fund Assessment** — Provides for relief of claims that have been granted second-injury relief. Relief is provided for any claim that is granted a total permanent disability award (pension); the cause of the disability must be partially attributed to a prior injury or pre-existing condition which contributes to the total disability in order to qualify for second-injury relief. The second-injury fund also provides for job modification and preferred worker costs. The assessment is based on claim payments made during the quarter. The rate is determined on a fiscal-year basis.
3. **Insolvency Trust Fund Assessment** — This assessment is for claim expenditures for self-insured employers that have defaulted on their obligations and exhausted their surety resources. Claim payments are the basis for this assessment. It is calculated on a calendar quarter basis and varies depending upon the amount needing to be collected.
4. **Supplemental Pension Fund and Asbestosis Fund Assessment** — The Supplemental Pension Fund covers increases in claims costs due to cost-of-living increases. The Asbestosis Fund covers claims costs for workers who file claims for asbestos-related diseases; the fund pays for all treatment and other compensation during the sometimes lengthy time it takes to identify the liable employer or employers. The assessment for each of these funds is combined into one rate, and is based on worker hours. You may deduct one-half of this rate from your employees' wages. This rate is calculated on a calendar year basis.
5. **Pay During Appeal Overpayment fund** — This assessment is paid only by the employees of a self-insured employer, but you are responsible for collecting the assessment and forwarding it to L&I. This fund is used to reimburse self-insured employers for benefits provided on claims during appeal periods where the outcome of the appeal process results in a claim overpayment. An employer can access the fund two years after the first attempt to collect if they are unable to fully recover the overpayment from the worker. The assessment is based on worker hours and assessed on a calendar year basis when needed.

## Section 6: Surety Requirements after Certification

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To establish the appropriate surety for the coming year, L&I analyzes your annual report of claim expenditures and reserves using two actuarial models or methods.

1. The **incurred-loss method** evaluates the accuracy of the initial reserve established for a claim and how accurately those reserves survive the test of time.
2. The **paid-loss method** analyzes the amount of claim expenditures made on a claim and how quickly that claim can be closed.

### How L&I calculates the surety

- If the difference between the two models is less than 25%, the surety is set at the level of the incurred loss method.
- If the difference between the two methods is 25–40%, the surety is set at the average of the two methods.
- If the difference is greater than 40%, L&I does additional analysis to determine what factors are influencing the difference and sets the surety requirement at a level appropriate for that employer.
- In no event would the surety requirement be set at less than the current minimum.

### Additional aspects of surety requirement

You have the right to submit an independent actuarial estimate. L&I reviews the report and reserves the right to accept or reject it.

- If you change third-party administrators, L&I reserves the right to set the surety as if the difference between the two methods was over 40%. Third-party administrator reserving practices differ greatly and can impact the surety calculations.

- If the self-insurer has a parent organization, the parent must complete and submit an *Agreement of Assumption and Guarantee of Workers' Compensation Liabilities* form (F207-040-001, [www.Lni.wa.gov/go/F207-040-001](http://www.Lni.wa.gov/go/F207-040-001)). If this parental guarantee is not furnished, L&I will add a surcharge of 25% to the surety requirement.
- L&I maintains that the initial reported reserves on a claim should be established at an appropriate level to provide benefits through closure of the claim, not just the benefits provided within the next 12 to 18 months.
- Financial watch — an alert that L&I is concerned with your ability to provide benefits to your injured workers, based on the department's analysis of your firm. If placed on financial watch, your firm would not be eligible to have its surety reduced and may have the surety requirement increased by an additional 25%.

### Posting surety for pensions

The self-insurer may cover the cost of a pension by:

- Depositing the full amount into the pension reserve fund,
- Posting a bond in the total amount, or
- Establishing an assignment of account from a commercial banking institution in Washington.

These options are also available to you for pensions on fatality claims.

A self-insurer who uses the bond or assignment of account option must deposit an additional amount equal to three months' pension payments in the reserve fund. L&I reviews pensions each calendar year to determine the adequacy of the reserve and the surety posted.

On a quarterly basis during the life of the pension, you must reimburse L&I for its payments for bonded or assigned account pensions.

## Section 7: Recordkeeping Requirements

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You must keep all of the following records, which must be open for L&I to examine. Accurate, properly maintained records will help you manage your business and, in case of an audit, minimize the time needed for an accurate review.

Keep complete records of all accidents, including minor ones. Even minor mishaps sometimes turn into injuries that require medical attention.

- **Record of all payments:** Record all payments of compensation to injured workers.
- **Log of occupational injuries and illnesses:** Your log of occupational injuries and illnesses at your workplaces must meet the legal requirements of the Washington Industrial Safety and Health Act (WISHA) and the federal Occupational Safety and Health Administration (OSHA).
- **Record of employment:** Maintain all records of employment necessary to verify information reported and required by law.

## Section 8: Employee Benefits

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Workers' compensation benefits in Washington State are set by the Legislature and change periodically. The Washington State Fund and self-insurers pay the same benefits.

### Eligibility for benefits

An employee working in an occupation subject to mandatory coverage has immediate workers' compensation coverage upon employment. There is no waiting period.

The employee is entitled to benefits when an injury, illness, or death occurs during the course of employment. This also includes an injury sustained during a meal period on the employer's premises even though the worker was not working at the time.

### Ineligibility

Benefits are not payable for intentional, self-inflicted injuries or suicide, or if the worker is injured while committing or attempting to commit a felony.

If a worker fails to comply with the intent and provisions of the law and you have the explicit approval of Labor & Industries, you can withdraw or suspend benefits.

### Time limitations

Any claim for job injury benefits must be filed within one year following the date of injury. A claim for occupational disease must be made within two years after the worker receives written notification that the disease is occupationally related.

A claim may be reopened for medical, wage replacement, and other benefits due to aggravation of an injured worker's condition within seven years of the date of first closure (or within 10 years of loss of vision or function of the eye(s)). A claim may be reopened at any time after seven years (or 10 years for eye-related injuries) for medical treatment only. Reopening applications received by the self-insurer must be forwarded to L&I within five working days.

### No evasion of benefits

No employer or worker may be exempted from workers' compensation responsibilities for benefits by any contract, agreement, rule, or regulation.

### Medical services

An injured worker has the right to select their attending provider and is eligible for full medical coverage for the services required to treat the condition(s) caused by or related to the work-related injury or occupational condition.

Beginning Jan. 1, 2013, injured workers will need to choose a health care provider who is part of the new L&I Medical Provider Network. They may see a non-network provider for the initial visit, but for additional or ongoing care, they will need to transfer to a network provider. (Note: Out-of-state providers need not be part of the network.)

### What coverage may include

Workers' compensation coverage may include:

- Medical, surgical, hospital, nursing, ambulance, and other related services; and
- The cost of drugs, medicines, crutches, prosthetic appliances, braces, supports and other similar items necessary for the worker's treatment and recovery.

### Transportation to medical care

If a worker's initial injury is serious enough to require transportation from the place of injury to a place of treatment, you must provide and pay for that transportation.

After initial treatment, travel expenses are paid only under certain circumstances; for example, when you request a medical examination or vocational services. (See WAC 296-20-1103 for details).

### Temporary total disability (time-loss compensation)

If employees are unable to work because of an occupational injury or illness, you will make payments to them to partially replace their lost wages. These payments are known as time-loss compensation.

A worker receives time-loss compensation when they cannot work for more than three days following the date of injury. An attending provider must certify that the worker cannot work because of the injury or illness and subsequently verify that they can return to work. If the employer continues to pay full wages while the worker is off the job, no time-loss is paid (this practice is known as “kept on salary”).

Payment is made for the first three days following the injury only when the worker is unable to work for 14 consecutive calendar days following the injury. However, a worker who makes an unsuccessful attempt to go back to work during this 14-day period is eligible for payment for any portion of the initial three days that is covered by the attending provider’s certification.

Compensation is paid according to a formula based on the worker’s gross wages from all employment (excluding overtime wages in most cases), marital status, and number of dependents at the time of injury. Minimum and maximum amounts payable are set by law.

Self-insurers determine the amount of benefits according to the law and are required to make first payment to the worker within 14 days following notice of a claim. After that, you must pay the worker twice a month or every two weeks for the duration of the temporary total disability.

## **Vocational rehabilitation services**

Self-insured employers are responsible for identifying workers who need vocational assistance to return to work. Many self-insured employers have light duty return-to-work programs available to assist their injured workers in returning to employment while they are medically recovering.

Once the worker’s condition stabilizes, it’s time to consider more permanent options for returning to work. These options may include returning to modified work or to a new job consistent with the worker’s physical restrictions.

Vocational services may include early return-to-work programs, vocational counseling and evaluation, job analysis, job modification, on-the-job training, or participation in a vocational plan. The self-insurer pays all reasonable and necessary costs of rehabilitation as provided by law. The injured worker may decline an approved vocational plan and be eligible for vocational costs for a period of five years after claim closure. You should be familiar with laws and regulations affecting vocational rehabilitation. Information is available online at [www.Lni.wa.gov/claims/for-vocational-providers/vocational-services](http://www.Lni.wa.gov/claims/for-vocational-providers/vocational-services).

## **Financial assistance for job modifications**

If the injured worker is returning to work with the employer of injury, that employer may ask L&I for financial assistance to pay for modifications to the job site in order to adapt it to the worker’s physical restrictions. Financial assistance is limited to \$5,000 and is intended to be a share of the total cost to the self-insurer. For more information, visit L&I’s website at [www.Lni.wa.gov/claims/for-vocational-providers/vocational-services](http://www.Lni.wa.gov/claims/for-vocational-providers/vocational-services).

## **Permanent disabilities — partial and total**

When an injury results in a permanent disability, the law allows a monetary award for the loss suffered. Awards are determined on the basis of ratings secured from certain health care providers.

### **Permanent partial disabilities**

For permanent partial disabilities, the self-insurer pays the award directly to the injured worker.

### **Total permanent disabilities (pensions)**

For total permanent disabilities (pensions), L&I makes the pension payments to the worker on behalf of the self-insurer.

Previously paid permanent partial disability awards reduce an employee’s pension benefit amount.

For injury claims for which a pension is awarded on or after July 1, 1986, pension benefits will be reduced if the injured worker also is eligible for a Social Security pension.

## Structured Settlement Agreements

Structured Settlement is a new option for workers and employers. It's an agreement between an injured worker and employer to resolve a claim. The agreement generally resolves all future benefits except medical. By law, workers are still eligible to receive appropriate medical treatment for conditions allowed on their claim.

In most structured settlements, the claim is closed and the worker is paid a set amount in periodic payments, which are spelled out in the agreement.

To be eligible, an injured worker must:

- Be 50 years of age or older, *and*
- Have an allowed workers' compensation claim in Washington that is at least 180 days old.
- Have a final and binding claim allowance order.

Self-insured employers may initiate structured settlement discussions by contacting an eligible injured worker to discuss opportunities for settlement. However, structured settlements are voluntary and the decision on whether to enter into a discussion or settlement is up to the worker.

Structured settlement agreements must be approved by the Board of Industrial Insurance Appeals.

Any self-insured structured settlement agreement that will impact a state fund must have the L&I director's prior written approval.

For more information, please visit [www.Lni.wa.gov/claims/for-employers/settle-a-claim](http://www.Lni.wa.gov/claims/for-employers/settle-a-claim).

## Death benefits

When an accident causes the death of a worker, the surviving spouse and eligible dependents receive monthly payments from a pension established for them. A burial allowance and an immediate cash payment, set by law, also are paid.

If the surviving spouse remarries, the law offers a choice between a final cash settlement of the pension or the right to resume monthly pension benefits if the marriage ends because of death or divorce. Other eligible dependents continue to receive monthly benefits, as fixed by law, even though the surviving spouse remarries.

If the deceased worker has no beneficiaries, the self-insurer must pay \$10,000 into the supplemental pension fund.

## Section 9: Processing Claims

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As a self-insured employer, you are responsible for ensuring your claims are managed in accordance with Washington's workers' compensation laws and rules.

For complete information, please visit [www.Lni.wa.gov/insurance/self-insurance/claims-management](http://www.Lni.wa.gov/insurance/self-insurance/claims-management).

## Section 10: Additional Requirements

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### Providing first aid

You must make sure that all employees have access to first-aid trained personnel. You can get help training your employees in first aid procedures from L&I's Division of Occupational Safety and Health (DOSH) at the L&I office nearest you.

First-aid kits must also be available in the workplace, regardless of how many employees you have. Make sure that first-aid supplies are:

- Readily available.
- Appropriate to your occupational setting, number of employees, and the response time of your emergency medical services.
- Easily accessible to all your employees.
- Stored in containers that protect them from damage, deterioration, or contamination. Containers must be clearly marked, not locked, and may be sealed.
- Able to be moved to the location of an injured or acutely ill employee.

### Special circumstances

Your first-aid requirements are more specific if your employees are logging or doing work that involves high voltages or confined-space entry. For more information, contact DOSH at the closest L&I office.

### Emergency washing facilities

If your employees work with corrosives, strong irritants, or toxic chemicals, you may need emergency washing facilities. For more information, please see [www.Lni.wa.gov/go/F417-257-000](http://www.Lni.wa.gov/go/F417-257-000).

### Other safety and health requirements

In case of in-patient hospitalization, death or probable death due to an on-the-job injury, you must report to DOSH within eight hours by calling 1-800-423-7233.

You can get complete information on state safety and health requirements from DOSH to help you comply with all rules, including recommendations for routine safety meetings for workers.

Maintenance of an accident-prevention program is an ongoing requirement for continuing self-insurance.

Learn more at [www.Lni.wa.gov/safety-health](http://www.Lni.wa.gov/safety-health) or call 1-800-423-7233.

### Confidentiality

The confidentiality of all claim records and records of employment is protected by law. It is your responsibility as the employer to maintain this confidentiality. All records, payrolls, and books are subject to L&I's inspection and verification.

### Informing workers about their rights and obligations

Self-insured employers must develop and maintain a comprehensive program to inform workers about the self-insurance program and the rights and obligations of employers and employees. The program must orient current and new workers within 30 days of hire. L&I provides a description of what you must include in your program to inform workers. We must approve any plan.

### Confidentiality: It's the Law

The confidentiality of all claim records and records of employment is protected by law. It is your responsibility as the employer to maintain this confidentiality. All records, payrolls, and books are subject to L&I's inspection and verification.

### Revealing of Mental Health Conditions or Treatment

As an employer, you must only share workers' compensation claim information with people who are authorized. Examples of people you can communicate with about the claim are:

- Your worker or their representative.
- Your authorized representatives.
- Medical providers treating or examining the worker.
- Vocational Rehabilitation Counselors.
- Authorized L&I personnel.

The employer is subject to a civil penalty of \$1000 per occurrence for revealing claim file information about mental health conditions or treatment to anyone except authorized representatives.

### **Examples**

**Example 1:** An employer sends an electronic correspondence to three people unauthorized to receive claim information. The correspondence shares a worker's mental health condition from the claim file. Since the information was sent through one electronic correspondence, the employer will be charged for one occurrence.

**Example 2:** One of the unauthorized people in Example 1 forwarded the electronic correspondence to an unauthorized person the next morning. Later that afternoon, that same person sent an additional correspondence to another unauthorized person. Since the unauthorized person sent the mental health information to other unauthorized people on two separate occasions, the employer will be charged for two additional occurrences.

**Example 3:** On three separate occasions an authorized representative verbally shares mental health information from a worker's claim file with three different unauthorized people. Since the information was shared in three separate conversations, the employer will be charged for three occurrences.

All complaints from the worker regarding this violation must be investigated to determine if the employer or their authorized representative violated RCW 51.28.070.

# Section 11: Compliance and Legal Issues

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If a self-insured employer fails to comply with industrial insurance laws and regulations, L&I can impose financial penalties, place you on corrective action, or decertify you as a self-insured employer.

## When penalties can be assessed

The following list summarizes the situations in which you could be subject to financial penalties:

- Failure to obtain workers' compensation insurance coverage.
- Misrepresenting payroll information.
- Failure to keep records.
- Refusal to allow L&I to inspect records.
- Illegal collections from employees for medical treatment or transportation.
- Injury caused by failure to provide state-required safeguards or protection.
- Injury of a minor who is prohibited by age from working in a given occupation.
- Failure to submit quarterly and annual reports.
- Failure to submit the required audited annual financial statement when due.
- Unreasonable delay or refusal to pay benefits.
- Failure to observe, obey or comply with any rule of the department.
- Default in the payment of any obligation.
- Misrepresenting information on which benefits are based.
- Failure to reimburse L&I for pension benefits.
- Failure to comply with Self-Insurance Electronic Data Reporting System (SIEDRS) requirements.
- Failure to comply with Self-Insurance Medical Bill Electronic Data Interchange (EDI) requirements.

## Corrective action and decertification

Significant deficiencies in your workers' compensation program can be grounds for placing you on corrective action, or for decertification.

### Corrective action

L&I can place you on probationary status as a self-insurer for a specific period of time. If you do not correct the deficiencies in your program during the corrective action period, L&I may revoke your certification for self-insurance.

### Petitions for decertification

Any employee, union, or association with a substantial number of employees employed by the self-insurer can petition L&I's director to decertify the self-insurer. If the department determines that the petitioner has provided sufficient grounds, the department will conduct a hearing on the issue. Based on the hearing records, the L&I director will make the final decision to decertify the self-insurer or place it on corrective action.

## Legal actions

Washington State law prohibits workers or their heirs from suing the worker's employer for job-related injuries or illnesses. The exception is when an employer intentionally caused a worker's injury, illness or death.

## Section 12: If You Disagree with an L&I Decision

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The Department of Labor & Industries may make decisions that affect your business, such as actions on an industrial insurance claim. You have the right to protest or appeal any decision, but you must follow certain legal procedures to protect your rights.

### Protest/reconsideration

After receiving notice of a department decision in a legal notice and order, self-insured employers have 60 days in which to submit a written letter to Labor & Industries protesting or requesting reconsideration of the ruling.

If you write us within the appropriate time period, the law requires us to respond to your protest with another written decision. Our further decision may either change or reaffirm our earlier ruling.

If you choose, you may appeal the notice to the Board of Industrial Insurance Appeals instead of protesting to L&I.

### Appeal

If you disagree with the second decision, you may appeal in writing to the Board of Industrial Insurance Appeals in Olympia. You must appeal within 60 days of receiving the department's decision.

The Board of Industrial Insurance Appeals is separate and independent from Labor & Industries. It is a three-member, quasi-judicial board that conducts hearings on workers' compensation issues that cannot be settled to the satisfaction of you, your employee, or Labor & Industries.

Appeals can be lengthy and complex. For complete information, please write to the Board for a copy of its booklet, *Your Right to Be Heard*, at the following address: PO Box 42401, Olympia WA 98504-2401. You can also contact the board through its website at [www.bii.wa.gov](http://www.bii.wa.gov).

# Resources

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## Ordering forms and publications

All self-insurance forms are available online at [www.Lni.wa.gov](http://www.Lni.wa.gov).

## Ordering workplace posters

Self-insured employers must post the following posters where their employees can read them.

- *Notice to Employees – If a Job Injury Occurs (Self-Insured)* (F207-037-909)
- *Job Safety and Health Law* (F416-081-909)
- *Your Rights as a Worker* (F700-074-909)

Posters are available to order online at [www.Lni.wa.gov/RequiredPosters](http://www.Lni.wa.gov/RequiredPosters).

## Most requested phone numbers

1-800-423-7233	Fatality/hospitalization reporting
360-902-6898	Forms
360-902-6901	Self-Insurance Section
360-902-6861	Certification Services Unit <i>(to request Participation Activation Codes needed to use L&amp;I's online Claim &amp; Account Center)</i>

## Contacting local L&I offices

Visit [www.Lni.wa.gov/Offices](http://www.Lni.wa.gov/Offices) for a list of service locations throughout Washington State.



*Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 711. L&I is an equal opportunity employer.*