CONCISE EXPLANATORY STATEMENT (CES)

2023 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, 2022

The effective date for this rule: January 1, 2023

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 2023. Classification base rates were updated to align with expected losses. Labor & Industries (L&I) proposes a 4.8% 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 4.8% to ensure adequate premiums to cover expected costs of 2023 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 two consecutive years of higher-than-normal increases in the state's average wage. L&I is able to minimize the increase for this upcoming year due to the ongoing efforts to gradually increase the workers' compensation contingency reserve (surplus).

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

No changes were made from the proposed rule.

3. Comments on proposed rule:

The public comment period for this rulemaking began September 20, 2022 and ended October 28, 2022. Two public hearings were held using Zoom meeting virtual technology on October 26 and 27, 2022. Twenty-two people and a number of L&I staff attended. Five people testified at the public hearings. We received 13 written comments.

Date	Number Attending	Number Testified
October 26, 2022	16	3
October 27, 2022	6	2

Below is the summary of the comments we received, and the department's response.

We heard from employers and representatives of agricultural industries such as fruit orchards, produce, potatoes, and dairy opposing the rate increase. In addition, we received comments and testimony from business and labor representatives regarding the contingency fund.

Agriculture industry

Comment Received: The agricultural industry will see an average 14% increase in their classifications. This workers' compensation increase comes on top of rising costs of the minimum wage, fuel, fertilizer, and general inflation. Agriculture is unique in that farmers don't set the price of their product and cannot increase it to accommodate increases in operating costs. The small farmers and family farmers will inequitably be burdened with these costs. Small farms make up 89% of Washington agriculture. The 4.8% overall average rate increase will mean an additional labor cost of over $10 million for small farms in 2023.

Department Response: Using the distribution of hours by risk class for the year ending June 30, 2022, the average 2023 composite base rate change for the agriculture industry risk classes is approximately 6%. The 2023 rate changes are different in each risk class. In the agriculture industry risk classes, the 2023 composite base rate changes range from a decrease of 2% in class 4804 (Eggs and Poultry) to an increase of 14% in class 4813 (Vineyards). The details of the changes by risk class and industry are available at https://lni.wa.gov/insurance/rates-risk-classes/rates-for-workers-compensation/.

Free of charge risk management and consultation services to manage employers' risks are available to help employers manage the causes of claim costs. Visit Labor & Industries website for more information: Reducing Rates (wa.gov)

Comment Received: The potato industry requests this rate increase rulemaking be suspended. Due to the pandemic, Washington potato growers gave away their crop in 2020. Because of the overnight change in the marketplace, potatoes that were grown and prepared for consumption in restaurants, cafeterias, and schools were not able to logistically change course and be provided to consumers in an economy that was shut down, as we all joined forces against Covid19. While we were glad to get our crop in to as many food banks as possible, many of our family farms are still trying to recover economically.

Department Response: We are obligated by statute to set rates each year in order to ensure enough premium is collected to cover the future year's claim costs. Each year, Labor & Industries' actuaries calculate base rates for each risk class based on five year of claim costs by claim type and hours worked.

We offer financial incentives to employers and free risk management consultation to employers to help control claim costs. Reducing Rates (wa.gov). In addition, payment plans are available in certain circumstances to help employers struggling to pay premiums.

Comment Received: We would like to express that the new proposed rate increase discourages/penalizes employers that currently have worked extremely hard to provide safe work environments and encourage safe work behaviors. These employers currently have much lower rate as a result of their efforts and it would be demoralizing for those companies to have the efforts in vain. This also discourages group efforts like the Farm Bureau Retro Safety program, because we are penalized as an industry and not based on our actual exposure. Rates should be factored based on individual company usage and practices not the practices of others.

Department Response: The rates are set at risk class level in like groups and reflect claim costs, increased or decreased. Individual employers have an experience factor based on their own claim activity and costs. If claims are happening in a risk class, the rate will reflect that.

In order to help limit the impact on Washington employers and workers, Labor & Industries (L&I) is adopting 2023 rates below the break-even rates. L&I will use the contingency reserves to cover any shortfalls between the premiums and the insurance costs.

Contingency reserve

Comment Received: What is most concerning to employers is the indicated rate increase of 17.8%. While it's nice the Department has the ability to dip into its contingency reserve to offset the indicated rate increase of 17.8%, the continued practice of doing so only masks the underlying problem of controlling workers' compensation costs and sets up the system for a crash in the long term. We can't continue dipping into our savings account to pay for our daily living expenses. Eventually we will run out of savings unless we do something to control our spending. We continually see reports that the WCAC meetings and news releases trumpeting the success of new initiative after new initiative to control costs at the Department. However, we're not seeing the results of these supposed savings reflected in rates. Instead, we continue to fall back on the contingency reserve to cover our shortcomings and cost control. This cannot continue. Employers will be the ones bearing the brunt of making the system solvent when we eventually run out of contingency reserve money. Our system needs to be reformed.

Comment Received: Despite the wild nature of the pandemic economy since 2020, our workers' compensation system is positioned to continue to meet the needs of injured workers without requiring significant spikes in rates due to the good planning and financial management of the Department in partnership with the members of the Workers' Compensation Advisory Committee since 2013. The responsible growth of the contingency reserve – intended for just such an occasion – has allowed L&I to propose rates well below the break-even rate indicated for 2023, just as it had for 2022. The proposed 4.8% average rate increase will help the program keep up with some cost increases driven by inflation, without imposing the shock of significant premium adjustments, as our state experienced in the early part of this century.

It is worth noting, however, that L&I has only recently brought the contingency reserve to a place where it even begins to approach the reserves of like-situated industrial insurance systems, and nowhere near the reserves held by private industrial insurance carriers. While there may be legitimate policy reasons why the State may not feel it necessary to hold 40% or 50% of liabilities in reserve, we must acknowledge that the lower-than-break-even-rates of 2022 and 2023 (if adopted) will very likely erode – and perhaps significantly so – the Department's ability to address future contingencies. In future rate setting, the Labor community expects that the goal of rebuilding the reserve to responsible levels be a core component of rate setting so that we can ensure both the health of the system to support the health of workers, and to provide stable and predictable premiums for rate payers. We support the proposal, and ask that the Department adopt it with few – if any – alterations.

Comment Received: While not in favor or opposing the rate change, here are just a few points. For three years now, the Department's been charging fairly substantially below what they calculate as a break-even rate. Essentially rates have been subsidized now for three years in a row. The Department is able to do that because of the contingency reserve that's at a reasonably healthy level. If the contingency reserve were lower and at levels it had been around ten years ago, they probably wouldn't be able to subsidize rates and there would be a much more significant increase. What's really happening this year from my view is that the increase is really just due to a decrease in the subsidy. The Department is not subsidizing rates as much as they did last year, but they're still keeping them quite a bit below that break-even rate. And they're able to do that because of the contingency reserve. When you look at that break-even rate, it's basically flat year over year, which is actually pretty good, considering the level of inflation and wage inflation we're seeing. If the rates per hour are not going up in the underlying cost, that's actually good. So overall from what I understand, what L&I seems to be trying to do is a reasonable approach to get rates to where they probably ultimately will need to be, but recognize that they don't want to hit anybody with a large increase at this time.

Department Response: The overall rate increase needed to breakeven for 2023 rates is 17.8%. Had Labor & Industries (L&I) not used available contingency reserve funds, we would likely have proposed a 17.8% general overall rate increase.

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 4.8% to ensure more adequate premiums to cover expected costs of 2023 claims. This increase is below the indicated break-even rate of 17.8% and consistent with our rate-making principle of keeping rates steady and predictable. This rate increase is required to partially account for two consecutive years of higher-than-normal increases in the state's average wage. L&I is able to minimize the increase for this upcoming year due to the ongoing efforts to gradually increase the workers' compensation contingency reserve (surplus).

Additional comments

Comment Received: As an accountant who prepares taxes for Washington employers and out-of-state employers, Washington's workers' compensation is probably one of the highest rates compared to many states.

Department Response: Statutory differences that set benefit levels, criteria for claim acceptance and resolution, along with other considerations most certainly contribute to the differences in rates between neighboring states. For example, Washington premiums are collected based on hours worked, not payroll. This often results in Washington needing to increase rates to account for higher wages. In payroll-based systems (all those except Washington), wage increases are automatically accounted for.

Comment Received: What changes is L&I making to become more efficient?

Department Response: Labor & Industries (L&I) has an Office of Continuous Improvement which helps us streamline work and facilitate change management. This group provides project direction and support to enhance and improve use of our resources.

Over the past decade, the Legislature has approved funding for a number of L&I initiatives aimed at reducing long-term disability and the related human and financial costs – resulting in a savings of well over $2 billion in avoided expenses.

These reforms have touched all aspects of the workers' compensation system, from the earliest stages of claim management to the quality of medical care provided, to the timing, design, and quality of vocational counseling interventions, and so on. Although the improvements often are based in specific processes, they share a common theme: the importance of keeping injured workers connected to the workforce and thinking of themselves as productive and capable, not as a "disabled individual".

From 2014 to early 2021, the percentage of injured workers who returned to work after receiving their first vocational service quadrupled, from about 11% to 41%. The reduction in long-term work disability, combined with other factors, has helped to reduce future benefit payouts by billions of dollars (based on actuarial projections).

Comment Received: Washington state should allow employers and employees to buy worker's compensation insurance from a private provider rather than the state.

Department Response: Washington State is an exclusive workers compensation insurance state. Current Washington state law prevents us from allowing private insurance providers.