

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020? (1) A worker with a developmental disability may be certified as a preferred worker, in the sole discretion of the supervisor of industrial insurance or the supervisor's designee, if the worker has an open state fund insured claim for an industrial injury or occupational disease, or a closed state fund claim where the closure is not final, that results in payment of time-loss compensation benefits for:

(a) A period of at least ((fourteen consecutive)) seven days if the worker's date of injury is on or after January 1, 2025; or

(b) A period of at least 14 days if the worker's date of injury is prior to January 1, 2025.

(2) A worker with developmental disabilities does not need to apply for preferred worker certification. The department will evaluate the worker's eligibility for certification after receiving the employer's documentation described in WAC 296-16-160(3).

(3) If the health care provider has released the worker without restrictions and the worker is returning to the job of record, a job analysis or job description is not needed.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-140 Which employers are eligible to benefit from the preferred worker program? The following employers may be eligible to benefit from the preferred worker program if they employ a certified preferred worker, with a date of injury on or after January 1, 2025, in a job approved by ((the injured worker's health care provider and)) the department's credentialed vocational rehabilitation professional; or if they employ a certified preferred worker with a date of injury prior to January 1, 2025, in a job approved by the worker's health care provider and the department's credentialed vocational rehabilitation professional:

(1) A Washington state fund employer with an industrial insurance account in good standing with the department, as outlined in WAC 296-17-31004(4); or

(2) A self-insured employer who employs a worker who is certified as a preferred worker under a state fund claim.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-145 Who must confirm the worker has returned to work that is consistent with the worker's limitations and physical restrictions? (1) Preferred worker benefits for a worker with a date of in-

jury on or after January 1, 2025, are only available when the offered job is approved by

~~(a)) a credentialed vocational rehabilitation professional who meets the qualifications in WAC 296-19A-210~~

~~(b) The injured worker's health care provider).~~

~~((2) For the purposes of chapter 296-16 WAC, the injured worker's health care provider is defined as:~~

~~(a) The attending provider; or~~

~~(b) The current primary care provider; or~~

~~(c) In cases of diagnosed and accepted mental health conditions, the treating psychiatrist or psychiatric advanced registered nurse practitioner or, if there is no treating psychiatrist or psychiatric advanced registered nurse practitioner, the treating psychologist.~~

~~(3)) The final determination ((in subsection (1) of this section)) must be made by the department's credentialed vocational rehabilitation professional, who may make a referral to an independent credentialed vocational rehabilitation professional for an on-site job analysis or other evaluation that may be necessary to confirm the job is appropriate for the worker's restrictions.~~

(2) Preferred worker benefits for a worker with a date of injury prior to January 1, 2025, are only available when the offered job is approved by:

(a) A credentialed vocational rehabilitation professional who meets the qualifications in WAC 296-19A-210; and

(b) The injured worker's health care provider.

(3) For the purposes of this chapter, the injured worker's health care provider is defined as:

(a) The attending provider; or

(b) The current primary care provider; or

(c) In cases of diagnosed and accepted mental health conditions, the treating psychiatrist or psychiatric advanced registered nurse practitioner or, if there is no treating psychiatrist or psychiatric advanced registered nurse practitioner, the treating psychologist.

(4) The final determination in subsection (2) of this section must be made by the department's credentialed vocational rehabilitation professional, who may make a referral to an independent credentialed vocational rehabilitation professional for an on-site job analysis or other evaluation that may be necessary to confirm the job is appropriate for the worker's restrictions.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-150 What benefits can an eligible employer receive from the preferred worker program? (1) In the sole discretion of the supervisor of industrial insurance or the supervisor's designee, an eligible employer, insured through the state fund or self-insured, may receive benefits shown in the table below:

A certified preferred worker ((certified on or after January 1, 2016;)) who is hired by:		
Employer	State Fund employer (pays premiums to L&I)	Self-insured employer
(a) Wage, clothing, and equipment reimbursements specified in subsection (2) of this section.	X	X
(b) Continuous employment incentive specified in subsection (3) of this section.		
(c) Does not pay accident fund and medical aid fund premiums for hours worked by the preferred worker.	X	
(d) Will not have the cost of any new claim filed by that preferred worker charged to their experience rating.		
(e) Receives reimbursement from the second injury fund for all benefits paid on any new claim filed by that worker during the certification period.		X

(2) For a preferred worker with a date of injury on or after January 1, 2025:

(a) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred worker (~~(who was certified on or after January 1, 2016)~~) with a date of injury on or after January 1, 2025, at work approved under WAC 296-16-145, performed during the worker's certification period:

~~((a))~~ (i) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to ~~((sixty-six))~~ 120 days in a ~~((twenty-four))~~ 24-month period ~~((and))~~ up to a maximum of ~~((ten thousand dollars))~~ \$25,000 per worker certification period.

~~((i))~~ (A) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

~~((ii))~~ (B) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the ~~((sixty-six))~~ 120.

~~((iii))~~ (C) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the ~~((sixty-six))~~ 120.

~~((iv) The sixty-six))~~ (D) The 120 days do not have to be consecutive.

((v)) (E) The employer may choose which (~~sixty-six~~) 120 days to seek reimbursement for.

((vi)) (F) The employer cannot be reimbursed for dates the employer employed the worker that are more than (~~twenty-four~~) 24 months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The (~~twenty-four~~) 24 month eligibility period ends January 31, 2018.

((vii)) (G) The employer must submit the request for reimbursement within one year of the date the work was performed.

((viii)) (H) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

((b)) (ii) Clothing the employer purchased for the worker, necessary to perform the (~~medically~~) approved work, up to (~~four hundred dollars~~) \$1,000 per worker certification period.

((i)) (A) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

((ii)) (B) When the work ends, the clothing belongs to the worker.

((iii)) (C) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

((e)) (iii) Tools and equipment the employer purchased to enable the worker to perform the (~~medically~~) approved work, up to (~~two thousand five hundred dollars~~) \$5,000 per worker certification period.

((i)) (A) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

((ii)) (B) The employer cannot be reimbursed for tools and equipment purchased prior to offering the job to the worker.

((iii)) (C) When the work ends, the tools and equipment belong to the employer.

((iv)) (D) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

((3)) (b) An eligible employer who continuously employs a certified preferred worker at the (~~medically~~) approved job without reduction in base wages for at least (~~twelve~~) 12 consecutive months, beginning on or after January 1, (~~2016~~) 2025, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor of industrial insurance or the supervisor's designee.

((a)) (i) The (~~twelve~~) 12 months begin the date the worker is certified as a preferred worker or the first date of employment, whichever is later.

((b)) (ii) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the (~~medically~~) approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., (~~thirty-two~~) 32 hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., (~~thirty-two~~) 32 hours per week. The work pattern is the

same as the (~~medically~~) approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

~~((e))~~ (iii) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the ~~((twelve))~~ 12-month period. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

~~((d))~~ (iv) The one-time payment is ~~((equal to the lesser of ten percent of the worker's wages or ten thousand dollars. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments))~~ \$25,000.

~~((e))~~ (v) Only one continuous employment incentive is payable per worker certification period.

~~((f))~~ (vi) The employer must submit the request for the continuous employment incentive within one year of the date the ~~((twelve))~~ 12 months ended.

~~((4))~~ (c) If the department receives a valid reimbursement or incentive request from different employers within the same worker certification period, the requests will be paid in the order received by the department up to the limits described.

~~((5))~~ (d) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

(3) For a preferred worker with a date of injury prior to January 1, 2025:

(a) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred worker with a date of injury prior to January 1, 2025, and who was certified on or after January 1, 2016, at work approved under WAC 296-16-145, performed during the worker's certification period:

(i) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to 66 days in a 24-month period and a maximum of \$10,000 per worker certification period.

(A) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(B) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the 66.

(C) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the 66.

(D) The 66 days do not have to be consecutive.

(E) The employer may choose which 66 days to seek reimbursement for.

(F) The employer cannot be reimbursed for dates the employer employed the worker that are more than 24 months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The 24-month eligibility period ends January 31, 2018.

(G) The employer must submit the request for reimbursement within one year of the date the work was performed.

(H) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

(ii) Clothing the employer purchased for the worker, necessary to perform the medically approved work, up to \$400 per worker certification period.

(A) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

(B) When the work ends, the clothing belongs to the worker.

(C) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(iii) Tools and equipment the employer purchased to enable the worker to perform the medically approved work, up to \$2,500 per worker certification period.

(A) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

(B) The employer cannot be reimbursed for tools and equipment purchased prior to offering the job to the worker.

(C) When the work ends, the tools and equipment belong to the employer.

(D) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(b) An eligible employer who continuously employs a certified preferred worker at the medically approved job without reduction in base wages for at least 12 consecutive months, beginning on or after January 1, 2016, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor of industrial insurance or the supervisor's designee.

(i) The 12 months begin the date the worker is certified as a preferred worker or the first date of employment, whichever is later.

(ii) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the medically approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., 32 hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., 32 hours per week. The work pattern is the same as the medically approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

(iii) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the 12-month period. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

(iv) The one-time payment is equal to the lesser of 10 percent of the worker's wages or \$10,000. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(v) Only one continuous employment incentive is payable per worker certification period.

(vi) The employer must submit the request for the continuous employment incentive within one year of the date the 12 months ended.

(c) If the department receives a valid reimbursement or incentive request from different employers within the same worker certification period, the requests will be paid in the order received by the department up to the limits described.

(d) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a preferred worker? (1) An employer must employ the certified preferred worker in a job that:

(a) Will continue to be available into the foreseeable future; and

(b) Is confirmed as consistent with the worker's permanent work restrictions as outlined in WAC 296-16-145; and

(c) Addresses a business need or provides economic value to the employer.

(2) The employer will not be eligible for preferred worker incentives if the offered job is any of the following:

(a) The job of injury with minor or no modifications;

(b) Work that is beyond the worker's medical restrictions;

(c) Work which requires training beyond the usual and customary training provided by the employer to similar employees;

(d) On-the-job training.

(3) Except for tools and equipment as described in WAC 296-16-150 (2)(c), and the continuous employment incentive as described in WAC 296-16-150(3), in no case will the employer receive any preferred worker benefits for dates worked prior to the department's receipt of all required documentation. The employer must submit to the department:

(a) For a preferred worker with a date of injury on or after January 1, 2025, a copy of the completed job analysis or department's job description form(, approved by the worker's health care provider; and) or for a preferred worker with a date of injury prior to January 1, 2025, a copy of the completed job analysis or department's job description form approved by the worker's health care provider; and

(b) The job offer, signed by the worker; and

(c) The preferred worker request form, available on the department's website, completed and signed by the employer.

(d) Once all appropriately completed documents described in (a) through (c) of this subsection have been received by the department, the employer can be reimbursed for the cost of any tools and equipment as described in WAC 296-16-150 (2)(c) if purchased within (~~sixty~~) 60 days of the first date of the preferred worker's employment.

(4) After the offered job is approved by the department's credentialed vocational rehabilitation professional, preferred worker benefits can be granted. The benefit start date will be no earlier than

the first workday after the department receives the employer's completed documentation.

(5) If the job is offered after the preferred worker's claim is closed, the worker's restrictions at time of claim closure will apply.

WAC 296-16A-030 What can I be reimbursed for? If the attending provider restricts your worker from performing his or her usual work, you may ask the attending provider to release your worker to perform light duty or transitional work for you. If the attending provider does so, you may employ your worker consistent with the attending provider's release. You can then receive reimbursement for some of the costs associated with that employment:

(1) For a worker claim with a date of injury on or after January 1, 2025:

(a) Wages: (~~Fifty~~) 50 percent of basic gross wages you paid your worker, for up to (~~sixty-six~~) 120 days actually worked in a (~~twenty-four~~) 24-month period, up to a maximum of (~~ten thousand dollars~~) \$25,000 total wage reimbursement per claim.

~~((a))~~ (i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

~~((b))~~ (ii) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the (~~sixty-six~~) 120.

~~((c))~~ (iii) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the (~~sixty-six~~) 120.

~~((d))~~ (iv) The (~~sixty-six~~) 120 days do not have to be consecutive.

~~((e))~~ (v) If the light duty or transitional work lasts more than (~~sixty-six~~) 120 days, you may choose which (~~sixty-six~~) 120 days to seek reimbursement for.

~~((f))~~ (vi) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

~~((g))~~ (vii) We cannot reimburse you for dates you employed your worker that are more than (~~twenty-four~~) 24 months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your (~~twenty-four~~) 24-month eligibility period ends January 31, 2014.

~~((h))~~ (viii) You must submit your request for reimbursement within one year of the date the work was performed.

~~((2))~~ (b) Training costs you incurred to enable your worker to perform the light duty or transitional work, up to (~~one thousand dollars~~) \$2,000 per claim:

~~((a))~~ (i) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

~~((b))~~ (ii) We will not reimburse you for the value of "in-house" training provided by your organization.

~~((c))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

~~((3))~~ (c) Clothing you provided your worker, necessary to perform the light duty or transitional work, up to (~~four hundred dollars~~) \$1,000 per claim:

~~((a))~~ (i) If you normally provide such clothing to your workers, we cannot reimburse you.

~~((b))~~ (ii) When the work ends, the clothing belongs to your worker.

~~((e))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

~~((4))~~ (d) Tools and equipment you purchased to enable your worker to perform the light duty or transitional work, up to ~~((two thousand five hundred dollars))~~ \$5,000 per claim:

~~((a))~~ (i) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

~~((b))~~ (ii) When the work ends, the tools and equipment belong to the employer.

~~((e))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

(2) For a worker claim with a date of injury prior to January 1, 2025:

(a) Wages: 50 percent of basic gross wages you paid your worker, for up to 66 days actually worked in a 24-month period, up to a maximum of \$10,000 total wage reimbursement per claim.

(i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(ii) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the 66.

(iii) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the 66.

(iv) The 66 days do not have to be consecutive.

(v) If the light duty or transitional work lasts more than 66 days, you may choose which 66 days to seek reimbursement for.

(vi) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

(vii) We cannot reimburse you for dates you employed your worker that are more than 24 months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your 24-month eligibility period ends January 31, 2014.

(viii) You must submit your request for reimbursement within one year of the date the work was performed.

(b) Training costs you incurred to enable your worker to perform the light duty or transitional work, up to \$1,000 per claim:

(i) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

(ii) We will not reimburse you for the value of "in-house" training provided by your organization.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

(c) Clothing you provided your worker, necessary to perform the light duty or transitional work, up to \$400 per claim:

(i) If you normally provide such clothing to your workers, we cannot reimburse you.

(ii) When the work ends, the clothing belongs to your worker.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

(d) **Tools and equipment** you purchased to enable your worker to perform the light duty or transitional work, up to \$2,500 per claim:

(i) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

(ii) When the work ends, the tools and equipment belong to the employer.

(iii) You must submit your request for reimbursement within one year of the date of purchase.