



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: October 01, 2024  
TIME: 9:18 AM

WSR 24-20-111

**Agency:** Department of Labor & Industries (L&I)

**Original Notice**  
 **Supplemental Notice to WSR** \_\_\_\_\_  
 **Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 24-15-119 ; or**  
 **Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**  
 **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**  
 **Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) Workers' Compensation Incentives: Preferred Workers and Stay at Work.  
Chapter 296-16 WAC, Employer—Worker reemployment incentives, and Chapter 296-16A WAC, Stay-at-Work program.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
November 12, 2024	10:00am	<b>Join in-person:</b> L&I Headquarters, Room S117 7273 Linderson Way SW Tumwater, WA 98501  <b>Join electronically:</b> <a href="https://lni-wa.gov.zoom.us/j/4283482697?omn=89161792824">https://lni-wa.gov.zoom.us/j/4283482697?omn=89161792824</a> Meeting ID: 428 348 2697  <b>Join by phone (audio only):</b> 253-215-8782 US (Tacoma) Meeting ID: 428 348 2697 Find your local number: <a href="https://lni-wa.gov.zoom.us/u/kdOkNlaejZ">https://lni-wa.gov.zoom.us/u/kdOkNlaejZ</a>	The in-person, virtual and telephonic hearing will begin at 10:00 am and will continue until all oral comments are received.

**Date of intended adoption:** November 19, 2024 (Note: This is **NOT** the effective date)

<b>Submit written comments to:</b> Name Annie Peeples Address Department of Labor & Industries Insurance Services/Employer Services PO Box 44148 Olympia, WA 98504-4148  Email Annie.Peeples@Lni.wa.gov Fax 360-902-4988 Other Beginning (date and time) <u>October 2, 2024, 8:00 am</u> By (date and time) <u>November 12, 2024, by 5:00pm</u>	<b>Assistance for persons with disabilities:</b> Contact Annie Peeples Phone 360-902-4723  Fax 360-902-4998 TTY 360-902-5797 Email Annie.Peeples@Lni.wa.gov Other By (date) <u>November 12, 2024</u>
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**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of this rulemaking is to implement requirements of Substitute House Bill 2127 (SHB 2127), Chapter 90, Laws of 2024.

This rulemaking will also implement House Bill 1927 regarding reducing the number of consecutive days of time-loss required to qualify for preferred worker certification from 14 to 7 days.

L&I is also conducting a separate rulemaking to amend chapter 296-19A WAC, Vocational rehabilitation, to implement 2024's SHB 2127.

Proposed amendments include:

<b>WAC</b>	<b>Change</b>
296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020?	<ul style="list-style-type: none"> <li>For a worker with a date of injury on or after January 1, 2025, update requirement for preferred worker certification from 14 days of time-loss compensation benefits to 7 days of time-loss compensations benefits.</li> <li>Removing the word consecutive, which was incorrect.</li> </ul>
<ul style="list-style-type: none"> <li>296-16-140 Which employers are eligible to benefit from the preferred worker program?</li> <li>296-16-145 Who must confirm the worker has returned to work that is consistent with the worker's limitations and physical restrictions?</li> <li>296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a preferred worker?</li> </ul>	<p>For a worker with a date of injury on or after January 1, 2025:</p> <ul style="list-style-type: none"> <li>Remove requirement for approval of job descriptions by the injured worker's health care provider.</li> <li>Clarify that credentialed vocational rehabilitation professionals that approve job descriptions are employed by the department.</li> </ul>
296-16-150 What benefits can an eligible employer receive from the preferred worker program?	<p>For a worker with a date of injury on or after January 1, 2025:</p> <ul style="list-style-type: none"> <li>Maximum wage reimbursement period per claim is increased from 66 days to 120 days.</li> <li>Maximum wage subsidy per claim increased from \$10,000 to \$25,000.</li> <li>Maximum reimbursement for clothing per claim is increased from \$400 to \$1,000.</li> <li>Maximum reimbursement for tools and equipment per claim is increased from \$2,500 to \$5,000.</li> <li>Discretionary one time incentive payment for continuous employment without reduction in wages for 12+ months is increased from the lesser of 10 percent of the worker's wages or \$10,000 to \$25,000 with no consideration of the worker's wages.</li> <li>Clarify that work must be approved, but not medically approved by the injured worker's provider.</li> </ul>
296-16A-030 What can I be reimbursed for?	<p>For a worker with a date of injury on or after January 1, 2025:</p> <ul style="list-style-type: none"> <li>Maximum wage reimbursement period per claim is increased from 66 days to 120 days.</li> <li>Maximum wage subsidy per claim increased from \$10,000 to \$25,000.</li> <li>Maximum reimbursement for training costs per claim is increased from \$1,000 to \$2,000.</li> <li>Maximum reimbursement for clothing per claim is increased from \$400 to \$1,000.</li> <li>Maximum reimbursement for tools and equipment per claim is increased from \$2,500 to \$5,000.</li> </ul>

**Reasons supporting proposal:** L&I must update these rules to implement the changes established by Substitute House Bill 2127, Chapter 90, Laws of 2024.

**Statutory authority for adoption:** RCW 51.04.020(1)

**Statute being implemented:** RCW 51.32.090 and 51.32.095

**Is rule necessary because of a:**

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Department of Labor & Industries  
**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Annie Peebles	Tumwater, WA	360-902-4723
Implementation	Michelle O'Brien	Tumwater, WA	360-902-4826
Enforcement	Brenda Heilman	Tumwater, WA	360-902-6369

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name  
Address  
Phone  
Fax  
TTY  
Email  
Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name  
Address  
Phone  
Fax  
TTY  
Email  
Other

No: Please explain: This rulemaking is exempt from preparing a cost-benefit analysis under RCW 34.05.328(5)(b)(iii) because it is adopting or incorporating by reference without material change a Washington State statute.

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.  
Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- |   |  |
|---|--|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW .
- Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name  
Address  
Phone  
Fax  
TTY  
Email  
Other

**Date:** October 1, 2024

**Name:** Joel Sacks

**Title:** Director

**Signature:**

