

WAC 296-17-870 Evaluation of actual losses. (1) Except as provided in subsections (3) through (13) of this section, the actual losses for claims with a date of injury during the experience period will be evaluated on the "valuation date." Losses on claims occurring outside the experience period will not be included. The actual losses for closed claims must include:

- (a) Accident and medical aid payments; and
- (b) Pension reserve amounts paid by the accident fund; and
- (c) Accident and medical aid benefits or payments that are scheduled to be paid; and
- (d) Reserve for other accident and medical aid benefits accessible by the worker while the claim is closed.

The actual losses for claims that are open may, in addition, also include a reserve for future payments. Actual losses do not include wage subsidies or reimbursements paid by the stay-at-work program.

(2) **Valuation date.** The valuation date shall be June 1, seven months immediately preceding the effective date of premium rates.

(3) **Retroactive adjustments - Revision of losses between valuation dates.** No claim value shall be revised between valuation dates and no retroactive adjustment of an experience modification shall be made because of disputation concerning the judgment of the claims examiner or because of subsequent developments except as specifically provided in the following cases:

- (a) In cases where loss values are included or excluded through mistake other than error of judgment.
- (b) In cases where a third party recovery is made, subject to subsection (5)(a) of this section.
- (c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.
- (d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to be noncompensable (ineligible for benefits other than medical treatment).
- (e) In cases where a claim is closed and is determined to be ineligible for any benefits.

In the above specified cases retroactive adjustment of the experience modification shall be made for each rating in which the claim was included. Retroactive adjustments will not be made for rating periods more than ten years prior to the date on which the claim status was changed.

(4) **Average death value.** Each fatality occurring to a worker included within the mandatory or elective coverage of Title 51 RCW shall be assigned the "average death value." The "average death value" shall be the average incurred cost for all such fatalities occurring during the experience period. The average death value is set forth in WAC 296-17-880 (Table II).

(5) **Third-party recovery - Effect on experience modification.**

(a) For claims with injury dates prior to July 1, 1994, a potential claim cost recovery from action against a third party, either by the injured worker or by the department, shall not be considered in the evaluation of actual losses until such time as the third-party action has been completed. If a third-party recovery is made after a claim had previously been used in an experience modification calculation, the experience modification shall be retroactively adjusted. The department shall compute a percentage recovery by dividing the current valuation of the claim into the amount recovered or recoverable as of the recovery date, and shall reduce both primary and excess losses

previously used in the experience modification calculation by that percentage.

(b) For claims with injury dates on or after July 1, 1994, if the department determines that there is a reasonable potential of recovery from an action against a third party, both primary and excess values of the claim shall be reduced by fifty percent for purposes of experience modification calculation, until such time as the third-party action has been completed. This calculation shall not be retroactively adjusted, regardless of the final outcome of the third-party action. After a third-party recovery is made, the actual percentage recovery shall be applied to future experience modification calculations.

(c) For third-party actions completed before July 1, 1996, the claim shall be credited with the department's net share of the recovery, after deducting attorney fees and costs. For third-party actions completed on or after July 1, 1996, the claim shall be credited with the department's gross share of the recovery, before deducting attorney fees and costs.

(d) Definitions:

(i) As used in this section, "recovery date" means the date the money is received at the department or the date the order confirming the distribution of the recovery becomes final, whichever comes first.

(ii) As used in this section, "recoverable" means any amount due as of the recovery date and/or any amount available to offset case reserved future benefits.

(6) **Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as now or hereafter amended, shall be reduced by the percentage of relief granted.

(7) **Occupational disease claims.** When a claim results from an employee's exposure to an occupational disease hazard, the "date of injury," solely for the purpose of experience rating, will be the date the claim for benefits was received by the department. The cost of any occupational disease claim, paid from the accident fund and medical aid fund and arising from exposure to the disease hazard under two or more employers, shall be prorated to each period of employment involving exposure to the hazard. Each insured employer who had employed the claimant during the experience period, and for at least ten percent of the claimant's exposure to the hazard, shall be charged for his/her share of the claim based upon the prorated costs.

(8) **Maximum claim value.** No claim shall enter an employer's experience record at a value greater than the "maximum claim value." The maximum claim value is set forth in WAC 296-17-880 (Table II).

(9) **Catastrophic losses.** Whenever a single accident results in the deaths or total permanent disability of three or more workers employed by the same employer, costs charged to the employer's experience shall be limited as required by RCW 51.16.130.

(10) **Acts of terrorism.** Whenever any worker insured with the state fund sustains an injury or occupational disease as a result of an incident certified to be an act of terrorism under the U.S. Terrorism Risk Insurance Act of 2002, the costs of the resulting claim shall be excluded from the experience rating computation of the worker's employer.

(11) **Claims filed by preferred workers.** The costs of subsequent claims filed by certified preferred workers will not be included in experience calculations, as provided in WAC 296-16-150.

(12) **Life and rescue phase of emergencies:** This provision applies to "emergency workers" of nongovernmental employers assigned to report

in classification 7205 (WAC 296-17A-7205) who assist in a life and rescue phase of a state or local emergency (disaster). The life and rescue phase of an emergency is defined in RCW 51.16.130(3) as being the first seventy-two hours after a natural or man-made disaster has occurred. For an employer to qualify for this special experience rating relief, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing survivors. This special relief is only applicable to nongovernmental employers during this initial seventy-two hour phase of the declared emergency unless the emergency has been extended by the official who declared the emergency. The cost of injuries or occupational disease claims filed by employees of nongovernmental employers assisting in the life and rescue phase of a declared emergency will not be charged to the experience record of the nongovernmental state fund employer.

(13) **2019 Coronavirus (COVID-19) claims:** All accepted COVID-19 claim losses will not be included in the determination of an employer's experience modification factor. An employer will not lose their claim free discount as a result of an allowed COVID-19 claim.

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 20-24-094, § 296-17-870, filed 11/30/20, effective 1/1/21. Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 19-23-080, § 296-17-870, filed 11/19/19, effective 1/1/20; WSR 13-11-128, § 296-17-870, filed 5/21/13, effective 7/1/13. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 11-24-026, § 296-17-870, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.16.100, and Title 51 RCW. WSR 09-16-109, § 296-17-870, filed 8/4/09, effective 10/1/09. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 08-24-074, § 296-17-870, filed 12/1/08, effective 1/1/09. Statutory Authority: RCW 51.06.035, 51.08.010, 51.04.020. WSR 07-12-045, § 296-17-870, filed 5/31/07, effective 7/1/07. Statutory Authority: RCW 51.16.035, 51.16.100. WSR 05-23-161, § 296-17-870, filed 11/22/05, effective 1/1/06. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 04-10-045, § 296-17-870, filed 4/30/04, effective 6/1/04. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-870, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-870, filed 8/28/98, effective 10/1/98; WSR 96-12-039, § 296-17-870, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 90-13-018, § 296-17-870, filed 6/8/90, effective 7/9/90; WSR 89-24-051 (Order 89-22), § 296-17-870, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-870, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 88-16-012 (Order 88-12), § 296-17-870 filed 7/22/88, effective 1/1/89; WSR 81-24-042 (Order 81-30), § 296-17-870, filed 11/30/81, effective 1/1/82. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-870, filed 11/27/78, effective 1/1/79; Order 75-38, § 296-17-870, filed 11/24/75, effective 1/1/76; Order 74-40, § 296-17-870, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-870, filed 11/9/73, effective 1/1/74.]