

# Chapter 296-14A WAC

## CLAIM RESOLUTION STRUCTURED SETTLEMENT AGREEMENTS

### WAC

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**WAC 296-14A-010 Negotiating settlements—How is a structured settlement agreement negotiated in a state fund claim?** (1) In a state fund claim, any party may submit a structured settlement application form to the department.

(2) The department will perform an initial review and determine if negotiations should proceed. When deciding whether to enter into negotiations for a structured settlement, the department will consider the following nonexclusive factors:

- (a) Worker's age;
- (b) Nature and extent of injury(ies) or disease(s) related to the claim;
- (c) Nature and extent of disabilities related to the condition(s) accepted under the claim;
- (d) Other medical conditions unrelated to the claim;
- (e) Other open or closed worker compensation claims for the worker;
- (f) Other settlements for injuries or diseases;
- (g) Worker's life expectancy;
- (h) Worker's marital or domestic partnership status;
- (i) Number and age of dependents;
- (j) Worker's sources of present and future income and benefits;
- (k) Worker's employment history;
- (l) Worker's education history;
- (m) Worker's labor market;
- (n) The effect a structured settlement agreement might have on other benefits the worker is receiving or entitled to receive.

(3) If the department decides to negotiate, it will contact the other required parties and obtain their consent to move forward in negotiations, and obtain their consent about how the negotiations will be conducted. Negotiations may be conducted in-person, by phone, or by letter.

(3/20/12)

(4) If all of the parties voluntarily agree to a settlement, the department will put the agreement in writing. All parties must sign the agreement.

(5) After all parties have signed the structured settlement agreement, the department will forward a copy of the signed agreement to the board of industrial insurance appeals (BIIA), and provide any necessary documentation for the BIIA approval process.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-010, filed 3/20/12, effective 4/20/12.]

**WAC 296-14A-020 Employers. (1) Who is an affected employer?** An employer is an affected employer if the cost of the claim which may be the subject of a structured settlement agreement is included in the calculation of the employer's experience factor used to determine premiums. The department will send notice of any structured settlement agreement negotiations to an affected employer.

(2) **How will an affected employer be notified of a structured settlement agreement negotiation?** When the department decides to begin settlement discussions, the department will notify all affected employers by mail, and will request the employer's participation in the negotiations.

(3) **How long does an affected employer have to respond to the department's notice of a negotiation?** An affected employer has fourteen calendar days from the date the notice is sent to respond to the department's request for participation.

(4) **What happens if an affected employer does not respond to the department's notice of a negotiation?** If the employer does not respond to the request within fourteen calendar days, the department will consider that the employer has declined to participate and will proceed with scheduling negotiations without the employer.

An affected employer who declines to participate as a party to a structured settlement agreement will be bound by the terms of the agreement including any impact the structured settlement may have on the employer's experience factor or on the employer's industrial insurance premiums.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-020, filed 3/20/12, effective 4/20/12.]

**WAC 296-14A-030 Continuation of benefits—Do Title 51 RCW benefits stop during settlement negotiations?** The department or self-insured employer must continue to manage the industrial insurance claim and pay benefits to which the worker is entitled during any settlement negotiation until the agreement is final.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-030, filed 3/20/12, effective 4/20/12.]

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**WAC 296-14A-040 Settlement issues—Can issues outside of Title 51 RCW be settled as part of a structured settlement agreement?** No. Issues outside of Title 51 RCW including, but not limited to, continued employment or discrimination claims cannot be settled within the structured settlement agreement.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-040, filed 3/20/12, effective 4/20/12.]

**WAC 296-14A-050 Future claims—Can future claims be settled as part of a structured settlement?** Future industrial injury or occupational disease claims may not be settled as part of a structured settlement. Future claims include, but are not limited to:

- (1) Work-related injuries that have not yet occurred or occupational diseases that have not yet manifested;
- (2) Applications for industrial injury or occupational disease benefits that have not yet been filed; and
- (3) Claims for future death benefits or survivor benefits when death results from the injury.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-050, filed 3/20/12, effective 4/20/12.]

**WAC 296-14A-060 Burden to Title 51 RCW funds—How does a self-insured employer obtain prior approval for a structured settlement agreement if the agreement will burden or impact any funds covered under Title 51 RCW?** (1) If a self-insured employer is considering subjecting a fund covered under Title 51 RCW to any responsibility or burden as a result of a structured settlement agreement, the self-insured employer will:

- (a) Notify the department in writing and give the director or the director's designee at least thirty days to either approve or deny the request; and
- (b) Provide the following information:
  - (i) A copy of the complete claim file(s) of the injured worker;
  - (ii) Any other information relevant to the proposed agreement; and
  - (iii) All terms of the structured settlement agreement, including an explanation of the anticipated impact on the fund(s).

(2) If settlement negotiations continue after the self-insured employer has notified the department of a structured settlement agreement that may impact any funds covered under Title 51 RCW, the self-insured employer will keep the department updated on all terms or information not previously provided.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-060, filed 3/20/12, effective 4/20/12.]

**WAC 296-14A-070 Protests—What if there is an outstanding protest on a claim that has a final settlement agreement?** Any outstanding protests on a claim with a final settlement agreement are deemed to have been resolved by the agreement.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-070, filed 3/20/12, effective 4/20/12.]

**WAC 296-14A-080 Payments—What is a periodic payment schedule?** Periodic payment for the purpose of

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RCW 51.04.063 structured settlements means payments that are made monthly unless the parties agree to a different payment schedule. In no case will payments be made more often than every two weeks.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-080, filed 3/20/12, effective 4/20/12.]

**WAC 296-14A-090 Prior agreements. (1) How can I get a copy of a prior settlement agreement?** The department must keep copies of all final structured settlement agreements. Any party who is actively negotiating a new structured settlement agreement can request a copy of prior agreements involving the same worker, if any exist, from the department.

(2) **What is active negotiation?** Parties will be considered in active negotiations when the requirements of RCW 51.04.063(1) have been met, one hundred eighty days have passed since the claim was received by the department or self-insurer, the order allowing the claim is final and:

- (a) All parties have agreed to attempt to resolve the claim(s) through a structured settlement agreement;
- (b) The parties are discussing potential resolutions; and
- (c) No resolution has been reached.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2011 1st sp.s. c 37 § 305. 12-07-065, § 296-14A-090, filed 3/20/12, effective 4/20/12.]