

**WAC 296-14-4121 What does the term "willful misrepresentation" mean with regard to the receipt of workers' compensation benefits?**

This term is found in RCW 51.32.240(5) which provides a 50 percent penalty, in addition to any overpayment, whenever any payment of benefits has been induced by "willful misrepresentation." The law goes on to state that it is willful misrepresentation for a person to obtain payments or other benefits in an amount greater than that to which he or she would have otherwise been entitled. Willful misrepresentation includes making a willful false statement or the willful misrepresentation, omission, or concealment of any material fact.

(1) Willful means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing workers' compensation benefits. Failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(2) The assessment of the 50 percent penalty does not apply to those instances where the misrepresentation is not willful, as defined above. For example, a worker receives wages at the time of injury of \$10.25 per hour, but he inadvertently indicates on the report of industrial injury or occupational disease that his pay is \$10.75 per hour. The state fund employer fails to submit a completed report form and the time-loss compensation benefit rate is based on wages of \$10.75 per hour. When this information is provided to the employer, worker, and medical provider by legal order, no interested party submits a protest within the statutory time frame, but further investigation later reveals the misinformation. An overpayment determination under RCW 51.32.240(1) may be appropriate upon discovery of the correct hourly pay rate, but the worker has not engaged in willful misrepresentation with specific intent to obtain benefits to which he would have otherwise not been entitled.

[Statutory Authority: RCW 51.04.010, 51.04.020, and 2004 c 243. WSR 04-20-024, § 296-14-4121, filed 9/28/04, effective 11/1/04.]