

**WAC 296-15-266 Penalties.** (1) **Under what circumstances will the department consider assessing a penalty for an unreasonable delay of benefits?** Upon a worker's or beneficiary's request or based upon its own motion, the department will consider assessment of an unreasonable delay of benefits penalty for:

(a) Time-loss compensation benefits if:

(i) The self-insurer has written medical certification based on objective findings from the attending provider authorized to treat that the worker is unable to work because of conditions proximately caused by the industrial injury or occupational disease;

(ii) The worker is participating in a department-approved vocational plan;

(iii) The self-insurer fails to make the first time-loss payment to the worker within 14 calendar days of notice that there is a claim;

(iv) The self-insurer fails to continue time-loss payments on regular intervals as required by RCW 51.32.190(3); or

(v) The self-insurer fails to take action per WAC 296-15-425.

(b) Unreasonable delays of loss of earning power compensation payments or permanent partial disability award payments will also be subject to penalty.

(c) Unreasonable delays of payment of medical treatment benefits will also be subject to penalty.

(d) Unreasonable delays of authorization of medical treatment benefits will also be subject to penalty.

(e) Failure to pay benefits without cause: The department will issue an order determining an unreasonable refusal to pay benefits, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer fails to pay a benefit such as time-loss compensation, loss of earning power compensation, permanent partial disability award payments, or medical treatment when there is no medical, vocational, or legal doubt about whether the self-insurer should pay the benefit. Accrued principal and interest will apply to nonpayment of medical benefits.

(f) Paying benefits during an appeal to the board of industrial insurance appeals: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer appeals a department order to the board of industrial insurance appeals, and fails to provide the benefits required by the order on appeal within 14 calendar days of the date of the order, and thereafter at regular 14-day or semi-monthly intervals, as applicable, until or unless the board of industrial insurance appeals grants a stay of the department order, or until and unless the department reassumes jurisdiction and places the order on appeal in abeyance, or until the worker returns to work, or the department issues a subsequent order terminating the benefits under appeal.

(g) Benefits will not be considered unreasonably delayed if paid within three calendar days of the statutory due date. In addition, if benefits are delayed due to an underpayment from the monthly wage calculation for time-loss compensation under RCW 51.08.178, then the department shall presume the benefits are not unreasonably delayed if:

(i) The self-insurer sent a written copy of the wage calculation to the injured worker on a department-developed template; and

(ii) The self-insurer informed the worker, in writing, on a department-developed template that the worker should contact the self-insurer with any questions; and

(iii) The self-insurer notified the worker, in writing, on a department-developed template to write to the department within 60 days if the worker disputed the calculation.

This presumption may be rebutted by a showing of action without foundation or unsupported by evidence demonstrating an unreasonable delay of benefits despite the notification to the worker and the worker's failure to dispute.

Provided, (g)(i) through (iii) of this subsection will not apply to payments for statutory cost-of-living adjustments, payments that do not use the amount stated in the department-developed template, or a refusal to make payments ordered by the department.

(2) **Under what circumstances will the department consider assessing a penalty for violation of rules?** Upon a worker's or beneficiary's request, or based upon its own motion, the department will consider assessment of a rule violation penalty if the self-insurer or third-party administrator fails to meet the requirements of Titles 51 RCW and 296 WAC.

(3) **How is a penalty request created and processed?**

(a) An injured worker may request a penalty against their self-insured employer by completing the appropriate self-insurance form or sending a written request providing the reasons for requesting the penalty. The request may include supporting documents.

(b) Within 10 working days of notification of the penalty request from a worker or department review, the self-insurer or third-party administrator may file a response. The response may include supporting documents.

(c) The department will issue an order in accordance with RCW 51.52.050 and 51.52.060 within 30 days after receiving a complete written request for penalty per (a) of this subsection. The department's review during the 30-day period for responding to the injured worker's request will include only the records in the department claim file at the time of the request and supporting documents provided by the worker and the employer per (a) and (b) of this subsection.

[Statutory Authority: RCW 51.14.090, 51.14.095, and 51.14.180. WSR 24-11-121, § 296-15-266, filed 5/21/24, effective 7/1/24. Statutory Authority: RCW 51.04.020. WSR 19-01-095, § 296-15-266, filed 12/18/18, effective 7/1/19. Statutory Authority: RCW 51.04.020 and 51.48.017. WSR 15-01-162, § 296-15-266, filed 12/23/14, effective 1/23/15. Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 06-06-066, § 296-15-266, filed 2/28/06, effective 4/1/06.]