

WSR 23-18-076
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 5, 2023, 8:31 a.m.]

Subject of Possible Rule Making: Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations; good faith and fair dealing.

Statutes Authorizing the Agency to Adopt Rules on this Subject: SHB 1521, chapter 293, Laws of 2023.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: SHB 1521 adds a new section to chapter 51.14 RCW, which explicitly requires the department of labor and industries (L&I) to "adopt by rule additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violations." It also adds that an employer that violates the duty of good faith and fair dealing three times within a three-year period shall be decertified.

Good faith and fair dealing in this context refers to the administration of workers' compensation benefits. Rules on this subject seek to protect the best interests of impacted workers by ensuring that they are free from coercion or other unfair practices regarding industrial insurance benefits that may be due to them.

This rule making will establish a "good faith and fair dealing" standard for self-insured employers and their third-party administrators (TPAs); establish criteria for determining the appropriate penalty amount for self-insured penalties; establish or amend criteria for decertification, including corrective action, of a self-insured employer; and establish criteria for providing benefits for workers if an employer is decertified, including payment of benefits if the employer had not provided a surety.

L&I is tasked with adopting such rules with consideration to "recognized and approved claim processing practices within the insurance industry, the department's own experience, and the industrial insurance and insurance laws and rules of this state," among other factors.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Not applicable.

Process for Developing New Rule: Parties interested in these rules may contact the individual listed below. The public may also participate by commenting after amendments are proposed by providing written comments and/or testimony during the public hearing and comment process. Public hearings will be held after the proposed language is filed.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Nicole Mitchell, L&I, Insurance Services, Self-Insurance, P.O. Box 44890, Olympia, WA 98504-4890, phone 360-902-6833, fax 360-902-6977, email Nicole.Mitchell@lni.wa.gov, website <https://www.lni.wa.gov/rulemaking-activity/>; or Cyal Christmas, L&I, Insurance Services, Self-Insurance, P.O. Box 44890, Olympia, WA 98504-4890, phone 360-902-6839, fax 360-902-6977, email Cyal.Christmas@lni.wa.gov, website <https://www.lni.wa.gov/rulemaking-activity/>.

September 5, 2023
Joel Sacks
Director