

HOUSE BILL REPORT

SB 5463

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to the duties of industrial insurance self-insured employers and third-party administrators.

Brief Description: Concerning the duties of industrial insurance self-insured employers and third-party administrators.

Sponsors: Senators Alvarado, Conway, Saldaña, Salomon, Nobles, Valdez, Hasegawa, Stanford, Robinson, Shewmake, Trudeau, Bateman, Chapman, Harris, Lias, Cleveland, Holy, Lovelett and Wilson, C..

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/18/25, 3/21/25 [DP].

Brief Summary of Bill

- Extends the duty of good faith and fair dealing to all workers' compensation self-insured employers and third-party administrators.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Bronoske, Obras and Ortiz-Self.

Minority Report: Without recommendation. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; McEntire.

Staff: Kelly Leonard (786-7147).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Self-Insured Employers.

Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disability benefits. The Department of Labor and Industries (L&I) administers the state's workers' compensation system. Employers in Washington must obtain coverage either through the industrial insurance fund administered by the Department of Labor and Industries (L&I) or by qualifying to self-insure.

Self-insurance is a program in which the employer covers all costs associated with an on-the-job injury or occupational disease. Self-insured employers administer their own claims and maintain a long-term obligation to pay benefits during the lifetime of their claims. Self-insured employers must meet certain requirements and maintain certification through L&I. Self-insured employers may contract with a third-party administrator (TPA) to administer claims. L&I licenses TPAs and certifies claims administrators.

Duty of Good Faith and Fair Dealing.

Effective July 1, 2024, the state established a specific duty of good faith and fair dealing in certain instances. All self-insured municipal employers, self-insured private sector firefighter employers, and their TPAs have a duty of good faith and fair dealing to workers. A "municipal employer" includes any county, city, town, port district, water-sewer district, school district, metropolitan park district, fire district, public hospital district, regional fire protection service authority, education service district, or such other units of local government. A "private sector firefighter employer" includes any private sector employer that employs over 50 firefighters, including supervisors, on a full-time, fully compensated basis as a firefighter of the employer's fire department, only with respect to their firefighters.

A self-insured municipal employer, self-insured private sector firefighter employer, or its TPA violates the duty if it coerces a worker to accept less than the compensation due to him or her, or otherwise fails to act in good faith or fair dealing regarding its obligations. L&I must investigate each alleged violation of the duty of good faith and fair dealing, and issue an order determining whether a violation has occurred within 30 calendar days. If the duty has been violated, the applicable employer must be ordered to pay a penalty of 1 to 52 times the average weekly wage at the time of the order, depending upon the severity of the violation, which accrues for the benefit of the worker. In addition, if a self-insured municipal employer, self-insured private sector firefighter employer, or its TPA violates the duty of good faith and fair dealing, L&I may impose the following penalties:

- a maximum of \$3,000 or 75 percent of the amount due, or the underpayment, for unreasonably delaying or refusing to pay benefits; and
- a maximum of \$3,000 for failure to comply with an L&I rule or other provision pertaining to workers' compensation.

L&I must decertify a self-insured municipal employer if it violates the duty of good faith and fair dealing three times within a three-year period, excluding violations constituting errors or delays that are inadvertent or minor.

Delaying Decertification.

L&I may delay decertification while a self-insured municipal employer has an enforceable contract with a licensed TPA that may not be legally terminated; however, the self-insured municipal employer may not renew or extend the contract.

Summary of Bill:

Duty of Good Faith and Fair Dealing.

The duty of good faith and fair dealing is extended to all self-insured employers and TPAs, including its requirements and applicable penalties. L&I must decertify a self-insured employer when L&I finds it has violated the duty of good faith and fair dealing three times in a three-year period. The requirements in the bill apply to all claims regardless of the date of injury.

Delaying Decertification.

L&I may delay this decertification of a self-insured employer while it has an enforceable contract with a licensed TPA that may not be legally terminated; however, the self-insured employer may not renew or extend the contract.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) There is an expectation that workers will be treated fairly by administrators in the workers' compensation system. However, some self-insured employers and TPAs do not have a legal duty to treat these workers fairly. To the contrary, courts have found that they have an inherently adversarial relationship. This needs to be addressed. In 2023 there was legislation to establish a duty of good faith and fair dealing, but it was amended to apply only to self-insured municipalities and private firefighters. This created a two-tiered system. But there are bad actors amongst the private self-insured employers too. A person should not have different legal protections in different contexts. The bill corrects this by extending this duty to all self-insured employers. The duty of good faith and fair dealing is

already an established concept in other insurance industries. L&I has already adopted rules for implementing it for self-insured employers. There have been a limited number of complaints with no sanctions yet. This will not be a radical change, but it will provide fairness to workers.

(Opposed) Washington is one of the few states that do not allow employers to use private insurance for workers' compensation. There are only two options: self-insurance or insuring through L&I. Self-insured employers are committed to their workers, and their approach often leads to better outcomes for workers. Self-insured employers do not dispute the importance of good faith. But this bill will not improve outcomes or help workers. It imposes vague and difficult to implement legal standards, which are exclusively controlled by L&I. The bill introduces uncertainty into the system without any material benefits to workers.

Persons Testifying: (In support) Senator Emily Alvarado, prime sponsor; Joe Kendo, Washington State Labor Council, AFL-CIO; April Frazier, SEIU Healthcare 1199NW; Brian Wright, Washington State Association for Justice; Rondi Thorp, Washington State Association for Justice; Christina Bayaniyan, Sheet Metal Workers Local 66; and Chris Shepard.

(Opposed) Lindsey Hueer, Association of Washington Business; and Christine Brewer, Washington Self Insurers Association.

Persons Signed In To Testify But Not Testifying: None.