

(Effective July 1, 2024)

WAC 296-15-268 Self-insurance penalty calculations. (1) For all penalties assessed per WAC 296-15-266, RCW 51.48.017, 51.48.080, or 51.14.180, the penalty amount shall be determined by weighing the following factors:

- (a) Amount of delayed payment.
- (b) Length of time of the delay.
- (c) History or past practice.
- (d) Whether the department has issued an order directing the payment.
- (e) Required adjustments to the amount of the payment.
- (f) Number of unaddressed requests for action to be taken by the employer or third-party administrator made by the department, worker/beneficiary, or provider.

(g) Efforts by the employer or third-party administrator to communicate with the worker, including communication of the basis for or calculation of a payment.

(2) For all penalties assessed subject to a multiplier of up to three times the amount of the penalty, the amount of the multiplier will be determined by weighing the following factors:

- (a) Number of prior violations in the past year of the same nature.
- (b) Harm or financial impact done due to the denial or delay of benefits.
- (c) Whether the employer or third-party administrator paid the undisputed amount of benefits.
- (d) The employer's or third-party administrator's timeliness or delay in responses to request from the department, worker/beneficiary, or provider.

(3) For all penalties assessed based on a violation of good faith and fair dealing, subject to a penalty of up to 52 times the average weekly wage, the amount of the multiplier will be determined by weighing the following factors:

- (a) Prior violations of good faith and fair dealing.
- (b) Harm or financial impact done due to the denial or delay of benefits.
- (c) Amount or number of other penalties assessed simultaneously.
- (d) Employer's or third-party administrator's participation in the investigation.
- (e) Whether the violation was based on WAC 296-15-270 or 296-15-272.

(4) The following mitigating factors may be a basis for reduction of the penalty calculation in subsections (1), (2), and (3) of this section, including a multiplier:

- (a) Efforts by the employer or third-party administrator to correct the actions.
- (b) Efforts by the employer or third-party administrator to communicate and educate employees and adjudicators of relevant policies and procedures.
- (c) Worker's failure to provide the employer or third-party administrator necessary documentation to complete a review or investigation.
- (d) Investigation attempts made by the employer or third-party administrator before it denied benefits.
- (e) Employer's or third-party administrator's participation in the department's investigation and timeliness of responses.

(f) Any other factors deemed appropriate by the department.

(5) Penalties assessed based on a violation of the duty of good faith and fair dealing, within a five-year period, will be calculated as follows:

(a) First time results in a minimum penalty of one times the average weekly wage.

(b) Second time results in a minimum penalty of 15 times the average weekly wage.

(c) Third time results in a minimum penalty of 25 times the average weekly wage.

(d) Four or more times results in a minimum penalty of 40 times the average weekly wage.

[Statutory Authority: RCW 51.14.090, 51.14.095, and 51.14.180. WSR 24-11-121, § 296-15-268, filed 5/21/24, effective 7/1/24.]