

## WSR 22-24-088

## PROPOSED RULES

## DEPARTMENT OF

## LABOR AND INDUSTRIES

[Filed December 6, 2022, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-127.

Title of Rule and Other Identifying Information: 2023 Transportation network companies (TNC) workers' compensation reporting and classification amendments. Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On January 10, 2023, at 10:00 a.m. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/83026247785>, Meeting ID 830 2624 7785, Passcode Jan1023!; join by phone 1-253-215-8782 US (Tacoma), Meeting ID 830 2624 7785, Passcode 73006331. The hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 14, 2023.

Submit Written Comments to: Jo Anne Attwood, Department of Labor and Industries (L&I), Insurance Services, Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email [JoAnne.Attwood@lni.wa.gov](mailto:JoAnne.Attwood@lni.wa.gov), fax 360-902-4988, by January 10, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email [JoAnne.Attwood@lni.wa.gov](mailto:JoAnne.Attwood@lni.wa.gov), by January 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to implement requirements of 2022's ESHB 2076 concerning rights and obligations of TNC drivers and TNCs. This new law provides workers' compensation insurance coverage to TNC drivers during platform dispatch and passenger dispatch time, among other rights and protections.

Proposed amendments include WAC 296-17-35205 Special reporting for taxi, for-hire, limousine drivers or entities, and commercial transportation services drivers and 296-17A-1401 Passenger transportation companies.

Reasons Supporting Proposal: Drivers previously exempt from workers' compensation coverage will be covered starting January 1, 2023. TNCs will report and pay for coverage. This rule proposal amends the reporting and classification rules to address the new requirements.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, 360-902-4777; Implementation: Keith Bingham, Tumwater, Washington, 360-902-4826; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(v) and (vi), as the proposed rules adjust rates pursuant to legislative standards in RCW 51.16.035.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The rule is fully exempt from a small business economic impact statement under RCW 34.05.310 (4)(e) and (f), as the proposed rules adjust rates as required by EHB 2076, codified as RCW 51.16.035.

Scope of exemption for rule proposal:

Is fully exempt.

December 6, 2022

Joel Sacks

Director

#### OTS-4174.1

AMENDATORY SECTION (Amending WSR 15-19-081, filed 9/15/15, effective 10/16/15)

**WAC 296-17-35205 Special reporting for taxi, for-hire, limousine drivers or entities; and ((commercial)) transportation ((service drivers)) network companies.** (1) ~~((When does the law providing for))~~ **Non-mandatory coverage ((begin? The law takes effect July 24, 2015, and exempts)).** The following individuals are excluded from mandatory coverage, ((who)) but may elect coverage as authorized under RCW 51.32.030:

(a) ~~((Drivers providing commercial transportation services (CTS), also sometimes known as transportation network company services (TNCs), as defined in Title 48 RCW;~~

~~(b))~~ For-hire vehicle operators as defined under chapter 46.72 RCW who own the for-hire vehicle or lease it from others;

~~((e))~~ (b) Limousine drivers as defined under chapter 46.72A RCW who own the limousine or lease it from others; and

~~((d))~~ (c) Taxicab operators, as defined under chapter 81.72 RCW, who own the taxicab or lease it from others.

(2) ~~((What are the special rules for these drivers and entities? If you are exempt from mandatory coverage as described in subsection (1) of this section:~~

~~(a) You may elect to buy workers' compensation insurance to cover yourself as provided by RCW 51.32.030 and as defined in WAC 296-17-31007 Owner coverage.~~

~~(b) For the reporting period July 1, 2015, through July 23, 2015, if we do not receive an application for optional coverage from you by~~

July 23, 2015, you must report your mandatory coverage on a prorated basis using one of these methods:

- ~~(i) For flat rate by driver, one hundred twenty hours per driver;~~
- ~~(ii) For flat rate by vehicle, two hundred forty hours per vehicle;~~
- ~~(iii) Actual hours worked.~~

~~(3) What are the quarterly reporting options for)) Mandatory coverage.~~

~~(a) Taxi, for-hire, limousine, and cabulance entities with employees must provide coverage for their workers.~~

~~(b) Transportation network companies (TNC) as defined in Title 49 RCW are required to report and pay premium to cover their drivers for the time the driver is in dispatch platform time or passenger platform time on the digital application. Drivers are only covered for a workplace injury or illness during these qualifying times.~~

~~(3) Quarterly reporting.~~

~~(a) Taxi drivers and entities ((τ)); for-hire drivers and entities ((, and CTS drivers? When reporting for an entire quarter)):~~

~~((a) If you are)) (i) An exempt driver who has elected coverage, ((you)) may report ((your)) exposure under either subclassification 1401-01 (480 hours per quarter per driver) or 1401-03 (actual hours worked), but ((you)) must report all ((your)) exposure for the quarter under only one subclassification.~~

~~((b) If you are or)) (ii) An entity reporting mandatorily covered workers, ((you)) may choose to report all driver exposure under subclassifications 1401-01 (480 hours per quarter per driver), 1401-02 (960 hours per quarter per vehicle), or 1401-03 (actual hours worked), but ((you)) must report all driver exposure for a quarter under only one subclassification.~~

~~((e)) Reporting method options:~~

~~((i)) (A) Flat rate by driver - The rate is based on ((four hundred eighty)) 480 hours per driver each quarter (classification 1401-01);~~

~~((ii)) (B) Flat rate by vehicle - The rate is based on ((nine hundred sixty)) 960 hours per vehicle each quarter (classification 1401-02);~~

~~((iii)) (C) Actual hours - The rate is based on actual hours worked (classification 1401-03).~~

**Special note:** If you report by driver or by actual hours worked, you must maintain verifiable records, such as lease agreements or payroll records.

~~((4) What are the quarterly reporting options for)) (b) Limousine drivers and entities ((τ)); and cabulance drivers and entities ((?)). For exempt drivers who elect coverage and for entities paying for coverage for mandatorily covered workers, when reporting an entire quarter, hours must be reported in one of the following methods:~~

~~((a)) (i) Actual hours worked; or~~

~~((b)) (ii) Four hundred eighty hours per quarter.~~

**Special note:** ((If you report)) Detailed records must be kept if reporting actual hours worked((, you must keep detailed records)).

(c) **Transportation network companies (TNC).**

TNCs must report quarterly the actual hours of each TNC driver for these times, as defined in chapter 49.46 RCW and this rule:

(i) "Dispatch platform time" means the time a driver spends traveling from a dispatch location to a passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip or the driver begins the trip through the driver platform. A driver cannot simultaneously be engaged in dispatch platform time and passenger platform time for the same transportation network company. For shared rides, dispatch platform time means the time a driver spends traveling from the first dispatch location to the first passenger pick-up location.

(ii) "Dispatch location" means the location of the driver at the time the driver accepts a trip request through the driver platform. For the purposes of reporting and coverage, a driver accepts a trip request and dispatch platform time begins when the driver indicates through the driver platform that they are starting travel to a passenger pick-up location.

(iii) "Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a driver, or which enables services to be delivered to a driver that enables the prearrangement of passenger trips for compensation.

(iv) "Passenger platform time" means the period of time when the driver is transporting one or more passengers on a trip. For shared rides, passenger platform time means the period of time commencing when the first passenger enters the driver's vehicle until the time when the last passenger exits the driver's vehicle.

**Special note:** TNCs must keep detailed records of each trip including; driver names, dispatch platform start and end times, and passenger platform start and end times. The department may request TNCs to provide supplemental quarterly reports containing this information.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 15-19-081, § 296-17-35205, filed 9/15/15, effective 10/16/15.]

## OTS-4171.1

AMENDATORY SECTION (Amending WSR 15-19-081, filed 9/15/15, effective 10/16/15)

**WAC 296-17A-1401 Classification 1401.** ~~((Applies to providing passenger transportation to others, including:~~

- ~~• Establishments that employ taxi or for-hire drivers as defined under:
 
  - ~~— Either chapter 81.72 or 46.72 RCW; and~~
  - ~~— WAC 296-17-35205, which describes special reporting.~~~~
- ~~• Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who:
 
  - ~~— Own their own vehicles or who lease vehicles from others; and~~
  - ~~— Elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.~~~~
- ~~• Commercial transportation services (also known as transportation network company) drivers as defined in Title 48 who are exempt from coverage, but who have elected optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.~~
- ~~• Pedicab and horse drawn carriage companies.~~

**Special note:** ~~If all conditions are met for the general reporting rules about standard exception employees, establishments that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be reported separately in classification 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are reported separately in classification 3411.~~

~~Work contemplated by this classification includes, but is not limited to:~~

- ~~• Operation of the vehicle;~~
- ~~• Loading/unloading passengers' luggage;~~
- ~~• Assisting passengers in and out of the vehicle;~~
- ~~• Pickup and delivery of small packages; and~~
- ~~• Incidental "cabulance" services which may be offered in conjunction with the taxi service.~~

~~This classification excludes:~~

- ~~• Maintenance/repair of the vehicle which is be reported in classification 3411;~~
- ~~• Establishments that operate ambulance services which is reported separately in classification 1405;~~
- ~~• Establishments that operate cabulance and paratransit services exclusively which is reported separately in classification 1404; and~~
- ~~• Dispatchers with no other job duties who may be reported separately in classification 4904.~~

~~For administrative purposes, classification 1401 is divided into the following subclassification(s):~~

**~~1401-01 Passenger transportation companies -- Flat rate by driver~~**

~~This classification is for reporting drivers on a flat rate of four hundred eighty hours per driver each quarter.~~

**~~1401-02 Passenger transportation companies -- Flat rate by vehicle~~**

~~This classification is for reporting vehicles on a flat rate of nine hundred sixty hours per vehicle each quarter.~~

**~~1401-03 Passenger transportation companies - Actual hours~~**

~~This classification is for reporting employees on an actual hours worked basis.~~

**~~1401-04 Pedicab and horse-drawn carriage companies~~**

~~Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.~~

~~Work contemplated by this classification includes, but is not limited to, care and feeding of animals while the vehicle is available for transporting passengers.))~~

**1401-01 Passenger transportation companies - Flat rate by driver**

This classification is for reporting drivers on a flat rate of 480 hours per driver each quarter.

**Applies to:**

Businesses providing passenger transportation to others, including:

- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

**Work activities include, but are not limited to:**

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

**Exclusions:**

- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

**1401-02 Passenger transportation companies - Flat rate by vehicle**

This classification is for reporting vehicles on a flat rate of 960 hours per vehicle each quarter.

**Applies to:**

- Businesses providing passenger transportation to others, including:
- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
  - Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

**Work activities include, but are not limited to:**

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

**Exclusions:**

- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904.

Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

### **1401-03 Passenger transportation companies - Actual hours**

This classification is for reporting employees on an actual hours worked basis.

#### **Applies to:**

Businesses providing passenger transportation to others, including:

- Transportation network companies as defined in Title 49 RCW. Special reporting and coverage requirements in WAC 296-17-35205;
- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

#### **Work activities include, but are not limited to:**

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

#### **Exclusions:**

- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

### **1401-04 Pedicab and horse-drawn carriage companies**

Applies to businesses engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

#### **Work activities include, but are not limited to:**

- Operation of the vehicle;
- Assisting passengers in and out of the vehicle; and
- The care and feeding of animals while vehicle is available for transporting passengers.

Businesses in this classification report the actual hours their employees work and must maintain verifiable records.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 15-19-081, § 296-17A-1401, filed 9/15/15, effective 10/16/15. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.16.100. WSR 11-24-022, § 296-17A-1401, filed 11/30/11, effective 1/1/12. WSR 07-01-014, recodified as § 296-17A-1401, filed 12/8/06, effective 12/8/06. Statutory

Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-542, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-542, filed 8/28/98, effective 10/1/98; WSR 87-12-032 (Order 87-12), § 296-17-542, filed 5/29/87, effective 7/1/87; WSR 85-24-032 (Order 85-33), § 296-17-542, filed 11/27/85, effective 1/1/86; WSR 83-24-017 (Order 83-36), § 296-17-542, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-542, filed 11/29/82, effective 1/1/83; Order 73-22, § 296-17-542, filed 11/9/73, effective 1/1/74.]