

WSR 24-01-080

AGENDA

BOARD OF INDUSTRIAL
INSURANCE APPEALS

[Filed December 15, 2023, 11:08 a.m.]

Pursuant to RCW 34.05.314, the board of industrial insurance appeals (BIIA) is submitting its semi-annual agenda of rules under development for publishing in the Washington State Register. For questions regarding this report, contact Brian Watkins at 360-753-6823 or brian.watkins@biia.wa.gov.

The following report describes current BIIA rules under development. Additional rule making may be deemed necessary to meet legal requirements, unforeseen circumstances, or evolving agency needs.

Agenda for Rules Under Development

January 1 - July 1, 2024

WAC	Subject	Purpose	Estimated Filing Date of Proposed Rule (CR-102)	Estimated Filing Date of Permanent Rule (CR-103)
263-12-117(4)	Perpetuation deposition filing	Clarify that the court reporter hired by the party taking a perpetuation deposition is responsible for filing perpetuation deposition transcripts. There have been some instances where there was confusion about whether the court reporter or the attorney should file it.	June 20, 2024	To be determined.
263-12-117(4) and 263-12-01501	Perpetuation deposition transcripts	BIIA staff discovered that deposition transcripts were not reasonably readable by assistive software used by sight impaired persons including affected BIIA staff. The BIIA contractor reporters' transcripts are readable by sight-impaired persons, but many perpetuation deposition transcripts aren't. The issue may be grounded in some transcript generator software, and by the use of certain graphic images. Revise BIIA rule to provide for, or specify, a technology standard or requirement within pdf transcripts for perpetuation deposition transcripts to assure [ensure] ADA accessibility (readability). Will consult court reporting community and BIIA's contractor among other sources.	June 20, 2024	To be determined.
263-12-01501(6)	Filings with the board	Add that "Written communication filed shall not include personal identifiers as described in GR 31(e), and, if present, shall be redacted." Change would prohibit or discourage parties from filing social security numbers, financial account numbers, and driver's license numbers.	June 20, 2024	To be determined.

WAC	Subject	Purpose	Estimated Filing Date of Proposed Rule (CR-102)	Estimated Filing Date of Permanent Rule (CR-103)
263-12-145 (3)(b)	Requests for translation of proposed decision and orders (PDOs)	Limited-English proficient self-represented persons can request that the BIIA translate PDOs. Occasionally a party requests translation after the deadline to file a petition for review has expired. That wasn't the intent of the current rule. Our current rule could be misread to permit late requests for translation, which throws into question whether we would be required to reopen the deadline to file a petition for review. Clarify that the request for translation must be made within the time to file a petition for review.	June 20, 2024	To be determined.
263-12-115(2)	Order of presentation in worker appeals from claim-rejection orders where worker argues that a presumption applies	With the advent of occupational disease presumptions now present in the Industrial Insurance Act, it is time to reexamine BIIA's strict rule on the order of presentation at trial. Change rule to recognize the difference in the order of presentation when a worker appeals a claim rejection order and claims entitlement to a statutory presumption. The notion is that when a worker appeals a claim rejection order and claims entitlement to a statutory presumption, the worker should first show that the presumption applies, then the defense should go next to have an opportunity to rebut the presumption, then the claimant should be allowed to present evidence in response to the case presented by the defense.	June 20, 2024	To be determined.
263-12-11801(2)	Affidavits and declarations	Current rule refers to affidavits or declarations conforming to the requirements of RCW 9A.72.085. However, that RCW has been repealed. Chapter 5.50 RCW is titled Uniform Unsworn Declarations Act. We should change the reference to chapter 5.50 RCW.	June 20, 2024	To be determined.
263-12-059 (3)(c)(i)	WISHA appeals —Request to stay abatement pending appeal	WISHA appeals. Current rule is vague on whether an affidavit or declaration is required when an employer moves for a stay of abatement. Change rule to clarify the filing requirements for evidence supporting stay motions. Either require or don't require whether an affidavit or declaration made on personal knowledge must be filed.	June 20, 2024	To be determined.