

WSR 24-08-025  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES

[Filed March 26, 2024, 8:49 a.m., effective April 26, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of labor and industries (L&I) is creating new rules in chapter 296-23 WAC, and amending one existing rule, WAC 296-23-362. The new rules define the recording notification process for when a worker wants to record independent medical examinations (IMEs) requested by L&I and self-insured employers. One existing rule, WAC 296-23-362, states an observer may not attend a psychiatric examination. This rule is updated as the amended statute includes an observer may be present for all examinations.

Citation of Rules Affected by this Order: New WAC 296-23-364 and 296-23-366; and amending WAC 296-23-362.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.36.070.

Other Authority: RCW 51.36.070.

Adopted under notice filed as WSR 24-02-068 on January 2, 2024.

Changes Other than Editing from Proposed to Adopted Version: In WAC 296-23-362, subsections (2) and (3) were reversed for ease of reading of the rule.

A final cost-benefit analysis is available by contacting Suzy Campbell, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 26, 2024.

Joel Sacks  
Director

**OTS-4992.6**

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-23-362** (~~(May a worker bring someone with them to an independent medical examination (IME)?)~~) **Independent medical examination (IME)—Accompanying person.** (1) Workers can bring an adult ((friend

or family member)) observer to the IME to provide comfort and reassurance. ((That accompanying person may attend the physical examination but may not attend a psychiatric examination.

~~(2))~~ The accompanying person ((cannot)) will not be compensated for attending the examination by ((anyone in any manner)) the department or self-insured employer. The accompanying person must be unobtrusive at all times. Obtrusive behavior includes, but is not limited to, verbally or physically interrupting, interfering, or obstructing the examination in any way.

~~((3) The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter.~~

~~(4) The purpose of the IME is to provide information to assist in the determination of the level of any permanent impairment not to conduct an adversarial procedure. Therefore, the accompanying person cannot be:~~

~~(a) The worker's attorney, paralegal, any other legal representative, or any other personnel employed by the worker's attorney or legal representative; or~~

~~(b) The worker's attending doctor, any other provider involved in the worker's care, or any other personnel employed by the attending doctor or other provider involved in the worker's care.~~

~~The department may designate other conditions under which the accompanying person is allowed to be present during the IME.)) (2) The accompanying person cannot be:~~

~~(a) The worker's attorney, paralegal, any other legal representative, or any other personnel employed by the worker's attorney or legal representative; or~~

~~(b) The worker's attending provider, any other provider involved in the worker's care, or any other personnel employed by the attending provider or other provider involved in the worker's care.~~

~~The department may designate other conditions under which the accompanying person is allowed to be present during the IME.~~

~~(3) The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter.~~

#### NEW SECTION

**WAC 296-23-364 Definition of notification process required for workers to record independent medical examinations (IME).** (1) After receipt of the IME appointment/assignment letter, but no less than seven calendar days before the date of the examination, the worker or their representative must provide written notice to the IME firm or an examiner not in a firm, as listed in the appointment/assignment letter, to inform of their intent to record the examination.

(2) Written notification of the workers' intent to record must be given for each IME appointment.

NEW SECTION

**WAC 296-23-366 Independent medical examination (IME)—Recording notification time frame.** If notice is received less than seven calendar days prior to the IME, a worker may record the examination **only if** the IME provider waives the seven calendar day notification requirement. If notification is received after 5:00 p.m., in the time zone of the examination location, the notification is considered received the next calendar day.