

**WSR 24-19-078**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed September 17, 2024, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-026.

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

Hearing Location(s): On October 24, 2024, at 10 a.m., via Zoom Meeting at <https://lni-wa-gov.zoom.us/j/4283482697?omn=84109922262>, Meeting ID 428 348 2697; or join by phone (audio only) 253-215-8782 US (Tacoma), Meeting ID 428 348 2697. Find your local number <https://lni-wa-gov.zoom.us/j/4283482697>. The virtual and telephonic hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 26, 2024.

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, beginning September 18, 2024, at 8 a.m., by October 24, 2024, at 5 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 October 22, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 51.16.035 requires L&I to classify all occupations or industries by degree of hazard. Since January 1, 2023, TNCs have reported and paid premiums for hours their drivers worked during dispatch and passenger platform time in Classification 1401 with taxis. L&I has researched and evaluated the impact of TNCs on Classification 1401 and determined TNCs represent at least 95 percent of the classification. L&I proposes creating a new risk classification for TNCs. The proposed rule includes a premium rate for the new TNC risk classification for 2025.

L&I also proposes rules to implement SHB 2382, chapter 184, Laws of 2024, which provides for TNC driver death benefits during noncovered times in certain circumstances. The rule proposal creates a rule describing the new benefit and creates an administrative classification to manage death benefit claims meeting the new law's criteria. Qualifying death benefit claims will be included in the annual rate calculation of the new TNC classification, but will not be included in any one TNC's experience calculation.

New WAC 296-17A-1408 Passenger transportation network companies, 296-17-945 Classification 1408 Passenger transportation network companies rate, 296-17A-1409 Passenger transportation network company driver death benefit claims, and 296-17-946 Passenger transportation network driver death benefit claims; and amending WAC 296-17A-1401 Classification 1401 Passenger transportation companies.

Reasons Supporting Proposal: L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of

hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). The proposed rules will ensure fair and equitable rates for TNC and taxi businesses.

Also, L&I is required to implement the new law established by SHB 2382 TNC driver death benefits.

Statutory Authority for Adoption: RCW 51.16.035 and 51.32.053.

Statute Being Implemented: RCW 51.16.035 and 51.32.053.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation: Michelle O'Brien, Tumwater, 360-902-4826; and Enforcement: Brenda Heilman, Tumwater, 360-902-6369.

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)(vi), as the proposed rules adjust rates pursuant to legislative standards in RCW 51.16.035. This rule amends the risk classifications under chapter 296-17A WAC. Each risk classification has an assigned rate that is used to calculate an employer's workers' compensation premium.

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 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.

Scope of exemption for rule proposal:

Is fully exempt.

September 17, 2024  
Joel Sacks  
Director

**OTS-5841.1**

NEW SECTION

**WAC 296-17-945 Classification 1408.**

**Passenger Transportation Network Companies Rate  
Effective January 1, 2025**

<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work Fund</b>	<b>Medical Aid Fund</b>	<b>Supplemental Pension Fund</b>
1408	0.04668	0.0061	0.2587	0.1758

**OTS-5821.1**

NEW SECTION

**WAC 296-17-946 Passenger transportation network driver death benefit claims.** In addition to the limited coverage provided in RCW 51.16.250, death benefits are provided in accordance with RCW 51.32.053 when a transportation network company driver's death results from an injury occurring while the driver is:

- Logged onto the transportation network company's digital network as available for work;
- Physically inside the transportation network company driver's vehicle or within the immediate proximity of the transportation network company driver's vehicle; and
- Not otherwise covered by this title.

The TNC definitions in RCW 49.46.300 apply.

For the purposes of this section, the applicable statute of limitations begins upon the driver's death.

The cost of the death benefits must be included in the consideration of rate changes for the risk class. The costs of death benefits are not included in the calculation of any individual transportation network company's experience modification factor.

**OTS-5822.2**

AMENDATORY SECTION (Amending WSR 23-05-075, filed 2/14/23, effective 4/1/23)

**WAC 296-17A-1401 Classification 1401.****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:**

- Transportation network companies as defined by Title 49 RCW are classified in 1408;
- 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:**

- Transportation network companies as defined by Title 49 RCW are classified in 1408;
- 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:**

- Transportation network companies as defined by Title 49 RCW are classified in 1408;

- 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.

**OTS-5823.1**

NEW SECTION

**WAC 296-17A-1408 Passenger transportation network companies.**

This classification is for reporting TNC drivers for all dispatch platform time and passenger platform time.

**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.

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

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle.

**Exclusions:**

- 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. Classified in 1401;

- 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. Classified in 1401;

- 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

- Businesses engaged in maintenance/repair of vehicles report maintenance/repair worker hours are classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, classification 4904 may be assigned.

**OTS-5824.1**NEW SECTION

**WAC 296-17A-1409 Passenger transportation network company driver death benefit claims.** This classification is only to be used to assign claims for death benefits for drivers who meet the criteria set forth in chapter 51.32 RCW passed by 2024 legislature session. No hours will be reported or premium paid for this classification and no standalone classification rate will be developed.