
Labor & Workplace Standards Committee

HB 1521

Brief Description: Concerning the duties of industrial insurance self-insured employers and third-party administrators.

Sponsors: Representatives Bronoske, Stonier, Wylie, Berry and Pollet.

Brief Summary of Bill

- Provides that self-insured employers and self-insured employers' lay representative third-party administrators have a duty of good faith and fair dealing to workers with respect to all aspects of workers' compensation.
- Requires the Department of Labor and Industries to enforce the duty of good faith and fair dealing.
- Establishes penalties for violations of the duty of good faith and fair dealing.

Hearing Date: 2/1/23

Staff: Kelly Leonard (786-7147).

Background:

Self-Insured Employers.

Under the state's workers' compensation laws, employers must either insure through the State Fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure. Self-insurance is a program in which the employer, the self-insurer, provides any and all appropriate benefits to the injured worker. Self-insurers manage some aspects of injured worker

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claims, including closing certain types of claims. Self-insurers must maintain records of all payments of compensation and provide to the Director of L&I all information the self-insurer has relating to a disputed claim. Self-insurers may contract with a third-party administrator (TPA) to administer claims. TPAs must be licensed by L&I, and claims administrators must maintain certification through L&I.

Penalties.

Employers are subject to penalties for violations of various workers' compensation requirements, including: unreasonably delaying or failing to pay benefits by a self-insurer; failing to pay premiums; misrepresenting the amount of payroll or employee hours; failing to keep, file, or provide adequate records and reports; or failing to comply with any other applicable workers' compensation laws or rules. The amounts of penalties are adjusted every three years based on changes in the Consumer Price Index.

Penalty amounts vary, but include:

- a maximum of \$1,000 or 25 percent of the amount due, or the underpayment, for a self-insurer who unreasonably delays or refuses to pay benefits; and
- a maximum of \$1,000 for failure to comply with L&I rule or other provision of the Industrial Insurance laws.

Summary of Bill:

All self-insured employers and self-insured employers' lay representative TPAs have a duty of good faith and fair dealing to workers. An employer violates its duty to the worker if the self-insured employer or its representative wrongfully induces a worker to accept less than the compensation due to him or her, or otherwise fails to act in good faith regarding its obligations. L&I must adopt rules establishing additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violations.

L&I must investigate each alleged violation of the duty of good faith and fair dealing upon the filing of a written complaint or upon its own motion. L&I must require the employer or its representative to file a written, substantive response, within 15 working days. L&I must issue an order determining whether a violation has occurred within 30 days of any request for an investigation.

If a self-insurer violates the duty of good faith and fair dealing, the employer must be ordered to pay a penalty of one to 10 times the average weekly wage at the time of the order, depending upon the severity of the violation, which accrues for the benefit of the worker. In addition, if a self-insurer violates the duty of good faith and fair dealing, L&I may impose the following penalties:

- a maximum of \$3,000 or 75 percent of the amount due, or the underpayment, for a self-insurer who unreasonably delays or refuses to pay benefits; and

- a maximum of \$3,000 for failure to comply with L&I rule or other provision of the Industrial Insurance laws.

The duty of good faith and fair dealing applies to all claims regardless of the date of injury.

Appropriation: None.

Fiscal Note: Requested on January 30, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.