

SENATE BILL REPORT

SHB 1521

As of March 14, 2023

Title: An act relating to industrial insurance self-insured employer and third-party administrator penalties and duties.

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

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Bronoske, Stonier, Wylie, Berry and Pollet).

Brief History: Passed House: 3/1/23, 69-27.

Committee Activity: Labor & Commerce: 3/14/23.

Brief Summary of Bill

- Specifies that self-insured employers and 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.
- Provides penalties for violations of the duty.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: General Penalty for Violation of Workers' Compensation Laws and Rules. Every person, firm, or corporation who violates or fails to obey, observe, or comply with any statutory provision of Industrial Insurance (workers' compensation) laws or Department of Labor and Industry (L&I) rules is subject to a penalty not to exceed \$1,000.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Penalty for Self-insurer Delaying or Refusing to Pay Benefits. Every time a self-insurer unreasonably delays or refuses to pay benefits, the self-insurer must pay a penalty not to exceed the greater of \$1,000 or 25 percent of the amount due for each underpayment made to the claimant. The penalty accrues for the benefit of the claimant and must be paid to the claimant.

When making the determination of the penalty amount, L&I must weigh at least the following factors:

- the amount of any payment delayed;
- employer communication of the basis for or calculation of the payment;
- history or past practice of underpayments by the employer;
- L&I orders directing the payment; and
- any required adjustments to the amount of the payment.

The L&I director must issue an order determining whether there was an unreasonable delay or refusal to pay benefits and the penalty amount owed within 30 days upon the request of the claimant.

Penalties Adjusted for Inflation. These and other penalties are adjusted for inflation every three years, beginning July 1, 2023, based upon changes in the consumer price index.

Summary of Bill: All self-insured employers and third-party administrators (TPAs) have a duty of good faith and fair dealing to workers. A self-insured employer or a TPA violates its duty if it coerces a worker to accept less than the compensation due to them, or otherwise fails to act in good faith or fair dealing 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. After receiving notice, the employer or the TPA may file a written response within ten working days. If the employer or the TPA fails to file a timely response, L&I must issue an order based on available information. L&I must issue an order determining whether a violation has occurred within 30 calendar days of receipt of a complete complaint or its own motion.

If an employer or a TPA violates the duty of good faith and fair dealing, it must be ordered to pay a penalty of one to 52 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-insured employer 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 an L&I rule or other provision pertaining to workers' compensation.

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

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony: PRO: We want to make sure that when an injured worker is compelled to get an exam that the exam is conducted in such a way that the provided is held accountable if something is missed. We want to make sure injured workers are fairly compensated. Some cities and jurisdictions have been managing claims in bad faith to save money. Passing this bill unamended will help solve this issue. Firefighters with health issues caused by their job are not receiving the care they need. Third party administrators have been the largest barrier to receiving care. The longer claims drag out, the less willing doctors and third-party administrators are to help them.

CON: This bill will create a new, undefined, unclear standard that is not consistent with the rest of workers' comp. This standard may be interpreted as prohibiting an employer from undertaking allowable questions and challenges of claims. It's unclear what would constitute a violation, and it could undermine the system and lead to civil action. This bill creates a statutory duty of good faith and fair dealing. This bill would affect all self-insured employers, including those who this bill was not intended for. Instead of passing this bill, all previous policies should be fully implemented.

Persons Testifying: PRO: Representative Dan Bronoske, Prime Sponsor; Doug Palmer, Washington State Association for Justice; Jamison Smith; Eric Becker; Teresa Taylor, (WACOPS) Washington Council of Police & Sheriffs; Samantha Grad, Teamsters 117.

CON: Candice Bock, Association of Washington Cities; Andy Cherullo, City of Tacoma; Christine Brewer, Washington Self-Insurers Association; Chris Hills, City of Kent, Risk Manager; Bob Battles, Association of Washington Business (AWB); Lacey Jane Wolfe, City of Bellevue.

Persons Signed In To Testify But Not Testifying: No one.