

SENATE BILL REPORT

SB 5524

As of February 5, 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: Senators Van De Wege, Keiser, Lovick, Cleveland, Conway, Hasegawa and Holy.

Brief History:

Committee Activity: Labor & Commerce: 2/07/23.

Brief Summary of Bill

- Creates a duty of good faith and fair dealing by self-insurers' and lay third party administrators to workers in the workers' compensation system.
- Requires investigations by the Department of Labor and Industries.
- 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.

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

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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 thirty 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: Self-Insurers' and Lay Representative Third Party Administrators Duty of Good Faith and Fair Dealing to Workers. All self-insured employers and self-insured employers' lay representative third-party administrators have a duty of good faith and fair dealing to workers relating to all aspects of workers' compensation. 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 workers' compensation due, or otherwise fails to act in good faith regarding its obligations under workers' compensation laws.

Rules for Duty of Good Faith and Fair Dealing. L&I must adopt by rule additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violation of its duties. In adopting a rule, L&I must consider, among other factors, recognized and approved claim processing practices within the insurance industry, L&I's own experience, and the workers' compensation and insurance laws and rules of this state.

Labor and Industries Investigations. L&I must investigate each alleged violation upon 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, and such response is due 15 working days after L&I's request. An L&I order determining whether a violation has occurred must be issued within 30 days of a request for an investigation.

Penalties for Violations of Duty of Good Faith and Fair Dealing. An order finding that a violation has occurred must also order the employer to pay a penalty of one to ten 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.

Additional Penalties. L&I may, for a violation of the duty of good faith and fair dealing, assess penalties not to exceed three times:

- the general penalties for violation of the workers' compensation laws and rules, up to

- \$1,000;
- the penalties for a self-insurer delaying or refusing to pay benefits, not to exceed the greater of \$1,000 or 25 percent of the amount due or each underpayment; and

These penalties include adjustments for inflation.

These provisions apply to all claims regardless of the date of injury.

Appropriation: None.

Fiscal Note: Requested on January 28, 2023.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.