

# Appendix 7: Stakeholder Survey Results – Injured Worker Survey

## 1 INTRODUCTION

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Over the summer of 2014 we sampled and surveyed injured workers over their satisfaction with the L&I claims management process. The sample included claims with > \$5,000 in medical costs; this was done to be more certain about getting information about “serious” claims with more L&I interactions. Note that this methodology helps identify “serious” claims, but also potentially underestimates the good and efficient interactions of L&I with the more common but less costly claims. The sample did not exclude workers who had disputed claims with attorney representation, which is a standard exclusion in L&I surveys. We had L&I contact the applicants’ bar to inform them that the survey was forthcoming, and explain the process.

After selecting the sample, we mailed letters to the potential respondents, asking them to call to participate, or access a unique website. Each recipient was given a code that was unique to them, to input into the online tool or when calling, to prevent duplication. After the letters were mailed, we monitored participation rates, and followed up with postcards. We also had the phone tool translated to Spanish, and had 135 respondents participate in Spanish.

The final participation results are as follows:

	Call Attempts	Total Completes	Employer Type			Survey Tool		Spanish
			State Fund: Retro	State Fund: Non-Retro	Self-Insured	Phone	Online	
<b>Workers</b>	11,274	1541	658	454	429	1140	401	135

Results were compiled and analyzed and the following report summarizes findings.

The worker survey results are not the only indicators available. The IPSOS Wave 4 September 2014 results from the L&I conducted worker survey of State Fund claims examined similar questions using a different methodology. The two surveys are not directly comparable. Taken together, however, they can provide a more complete picture of the factors supporting and detracting from the principal question: Are claim decisions made without favoritism or bias?

The inherent survey logic model of the IPSOS study suggests overall claim experience is moderated by behaviors such as listening to and understanding the concerns of others, caring for their well being, answering questions and being helpful and friendly. The JLARC study specifically addresses the perception of *respect* in contacts with L&I. Logically, the key factors that contribute to positive or negative overall claim experience will be consistent with the perception of respect. This approach is consistent with medical literature on patient care, which highlights listening, empathy, understanding, courtesy, and professional accountability as behaviors that demonstrate respect.

## 2 ARE CLAIM DECISIONS MADE WITHOUT FAVORITISM OR BIAS?

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The first question to be addressed concerns L&I performance with respect to fairness. The audit design posed this question for consideration: Do workers believe the process and claims decisions made were fair?

Answering this question is really about answering a number of different questions. We'll group them here for simplicity. We'll also take this question in several subsections:

1. Overall claims process
2. When issue is protested or appealed
3. When claim is denied

### 2.1 OVERALL CLAIMS PROCESS

Satisfaction with the overall claims process is examined separately from the protest/appeal/denial process, which will be dealt with as separate processes and the outcomes measured within those specific groups of workers.

For overall satisfaction, we'll examine how workers felt about their interaction with L&I if they needed to interact. We'll also examine this separately for those that did and did not have an interaction through a protest, appeal or denial.

Q9\_NEED\_DIRECT\_CONTACT\_LNI

	Frequency	Percent	Valid Percent	Cumulative Percent
NO	494	32.0	32.0	32.0
Not sure	42	2.7	2.7	34.7
Valid REF	4	.3	.3	35.0
YES	1003	65.0	65.0	100.0
Total	1543	100.0	100.0	

Ignoring those workers that could not or would not answer, 33% had no need to contact L&I and can be considered satisfied with the claim process.

For the remaining 67% we examined their interaction using the following series of questions:

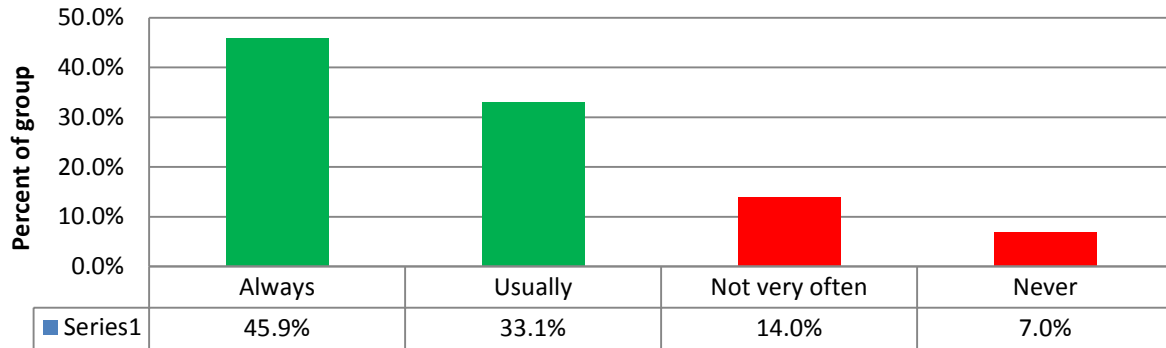
- treated with respect
- did need face-to-face
- sufficient face-to-face time

If the injured worker needed to contact L&I, we are interested how well that contact was handled.

#### 2.1.1 Treatment with Respect

Question 12 asks, "When you contacted L&I, how often where you treated with respect?" [Note this question is only asked of the workers that indicated they needed to contact L&I]

### Treated with respect when contacting L&I?



Almost 4/5ths of workers were "Always" or "Usually" treated with respect. These numbers could be considered good, particularly the high portion answering "Always" (45.9%) and the low fraction answering "Never" (7.0%). But we suspect no organization will be satisfied if 1/5th of persons contacting them felt they were not treated respectfully.

Both a prior Gilmore survey (2009) for L&I and a recent North Dakota survey (2014) got somewhat more positive responses to similar questions about interactions with the agencies. The results are likely more similar to our survey results than the data indicate because our survey focused on more complex claims and included workers whose claims were denied and those with attorney representation.

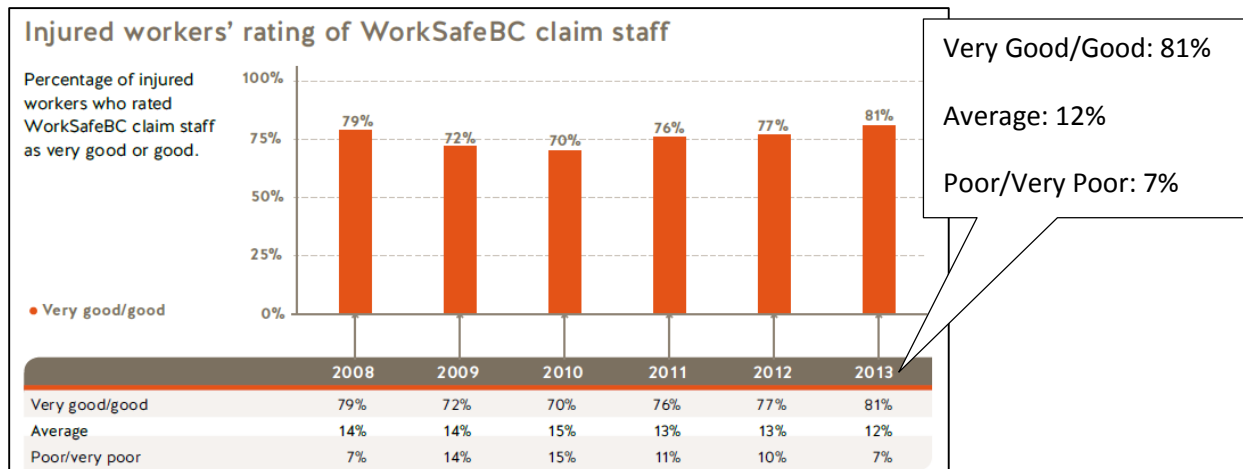
Results from similar question on Gilmore 2009:  
88% Agreed/Strongly Agreed L&I was "courteous and professional"

North Dakota 2014:  
92% said WSI staff "was polite"

It could be valuable to L&I to ask this question and follow-up specifically with the subset of claimants that were dissatisfied with the way they were treated. Finding exactly what made the experience poor would allow L&I to address issues in how workers perceive the interaction.

Note: The dissatisfaction with the way they were treated was not statistically different when evaluating those with protests, appeals or denied claims. There was a substantial level of dissatisfaction in each case.

WorkSafeBC results are consistent with these other studies although the question was different: From the 2013 Statistics document:



The recent IPSOS results show that direct contact with claims managers contributed to an overall assessment of good or very good for the overall claim experience (73%). Among those having direct contact with the claims managers, only 9% rated satisfaction with the overall experience as poor.

Assuming “being treated with respect” contributes to a positive assessment of the overall claim experience, it is likely that the reverse is also true. The apparent disconnect between the IPSOS survey and the JLARC survey suggests respondents to the latter may reflect a greater proportion of those dissatisfied with the overall experience.

On the positive side, the IPSOS study showed high ratings for claims managers for being helpful and friendly (76%), answering questions (72%), listening and understanding (68%), and carrying about [worker] well-being (64%).

Also contributing to the assessment of an overall positive experience were contacts with claims office assistants. Although not decision makers, these claims personnel represent the spirit of the organization. The high scores for being helpful and friendly (83%) and answering questions or resolving concerns (71%) are consistent with respectful treatment. Claims office assistant categories, the very low percentages of survey respondents giving poor or very poor assessments of the categories mentioned (under 10%).

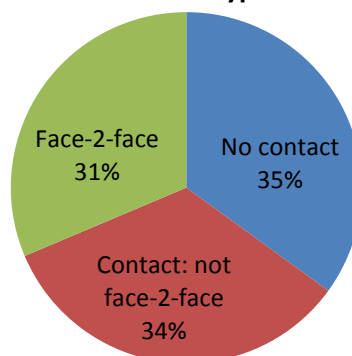
The JLARC survey and the IPSOS results may also reveal some common elements among respondents with lower assessments of overall satisfaction. As noted in earlier, the current survey found 21% of respondents reported they were seldom or never treated with respect in contacting L&I. This is surprisingly consistent with the percentage of respondents in the Ipsos findings who rated case managers poor or very poor in “carrying about your well-being.”

### 2.1.2 Face-to-face contact with L&I

A specific issue we were asked to address in the audit was the interaction with L&I by workers that felt they needed direct, face-to-face contact with L&I.

This turns out to be an area where there are clear problems. We can think of the problem as two-fold: the number of workers that needed face-to-face discussion and the difficulty with getting the contact they felt they needed.

**Needed contact & type of contact**



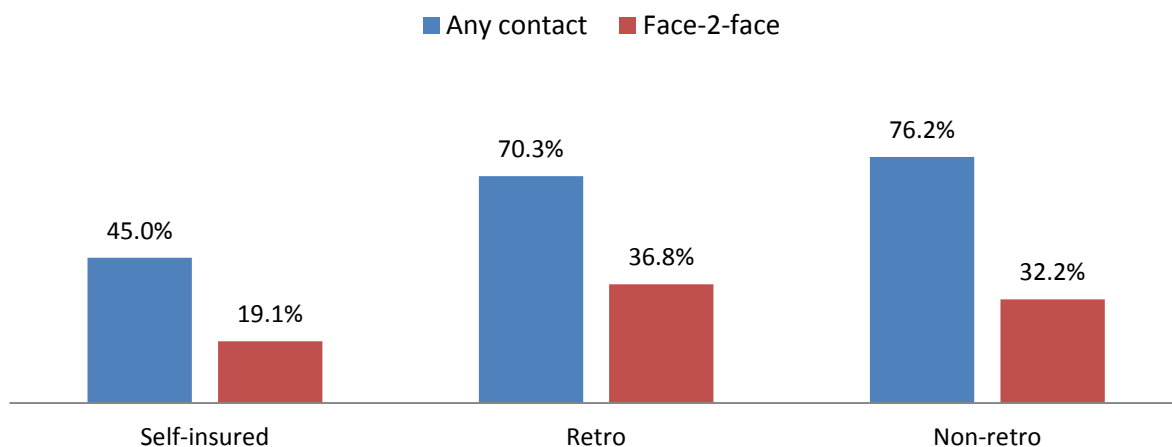
A surprisingly large fraction of workers reported a need for face-to-face contact with L&I. Nearly 1/3rd of all workers surveyed and nearly 1/2 of all workers that reported needing to contact L&I indicated a need for face-to-face contact. It is impossible to tell if this surprising result is due to the sample of respondents, or an unrealistic expectation in the general population.

What makes this unusual and difficult to compare is that L&I is relatively unique in offering this expectation. Consider other states where insurance is mainly delivered through private insurers or quasi-public state funds. In these states, the activities of the insurers are separate from the activities of adjudicating claim disputes. But while these processes are separated within L&I, the public perceives and even L&I talks as though the organization is a single entity delivering all these services.

Insurers, both private and quasi-public, deliver their services at arm's length from claimants. We are not aware that insurers routinely have face-to-face contact with claimants outside judicial processes. Workers' compensation agencies do have contact on issues, but the majority of these contacts are handled by phone. There tends to be much more allowance for face-to-face meetings in mediation sessions and in vocational counseling.

Consequently, the expectation for face-to-face contact seems more an unrealistic expectation, like expecting a real human to answer the phone when you call a big corporate office. It may indicate that other, arguably more efficient forms of communication like phone, email and online, are not being as successfully utilized as the claimants might like.

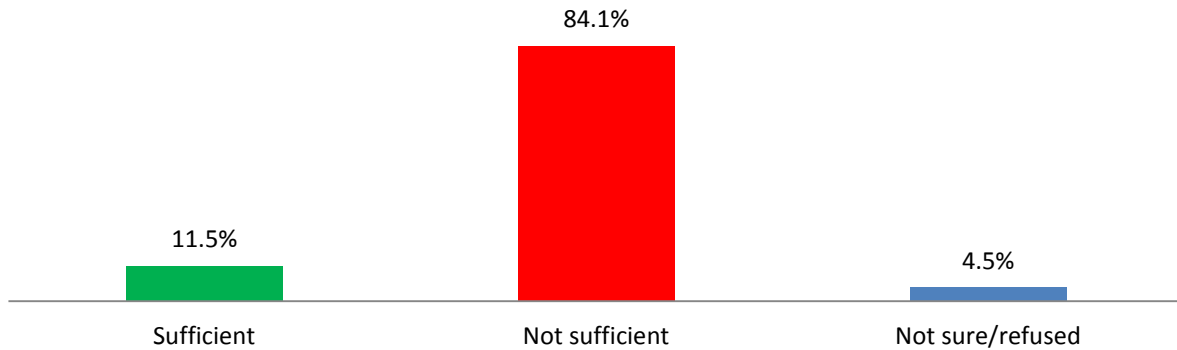
### Workers answering "Yes" to needing to contact L&I



When we break down the workers by the insurance status of the employer we see confirmation for the contention that much of the frequency with which workers need to contact L&I is driven by L&I's dual role as insurer and adjudicator. Workers at self-insured employers, where the insurance function is handled by the employer (or its agent), are only about 60% as likely to need to contact L&I. Similarly, face-to-face contact is about 60% less often needed.

What is apparent is that when workers feel they need face-to-face contact with L&I, they are consistently dissatisfied with access to L&I. The chart below shows that the vast majority (84%) of workers that needed face-to-face contact felt they were given insufficient opportunity for this option.

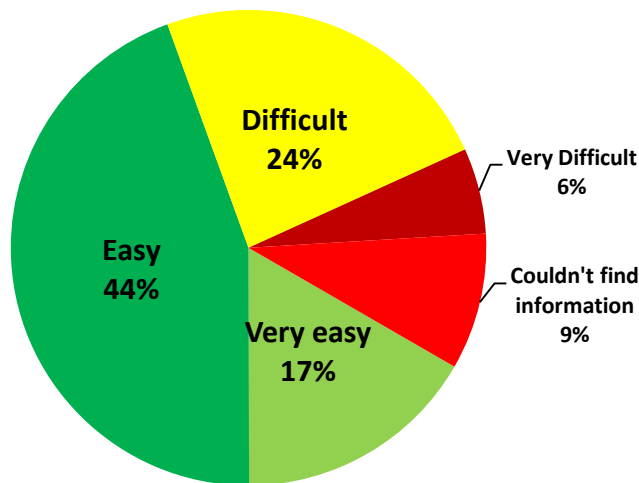
### Were you given sufficient face-to-face time when needed?



#### 2.1.3 Online Services

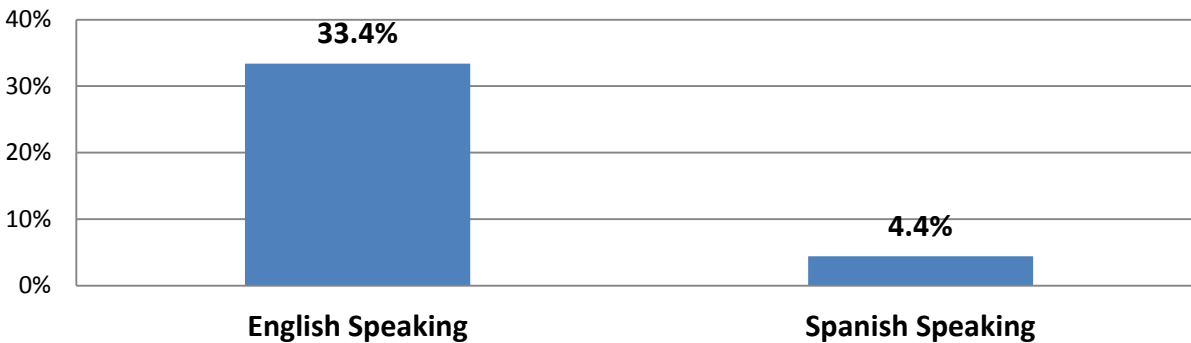
The Claim and Account Center (CAC) is set up to let employers, workers, and other parties to a claim to track the all actions and documents recorded in the L&I claim file. One third of workers indicated that they used this system to track their claim. In focus groups, participants unanimously answered that the system was impossible to use and of no value. But this is inconsistent with the survey, where both employers and workers had a positive perception of how well the system worked. 60% of workers reported the system “very easy” or “easy” to use. While a substantial fraction of workers still find it difficult to use, the difference between the focus group (older claims) and the survey (relatively more recent claims) suggests that L&I is making substantial progress on improving the interface of the on-line system.

### How Easy is the On-line Account System to use?



There was one area of possible concern about the On-line Account System. Spanish speaking workers rarely (4.4%) used the system to track their claims. There can be several reasons for this lack of use, for example, lack of access to computers and the Internet, or a lack of familiarity with the Internet. The most obvious barrier is that there is no non-English content available. Access barriers are discussed at greater length in Chapter 4: Communications.

**Fraction of Respondents Reporting Used On-line Account System**



This percentage of usage of online services is higher than in ND, where 54% reported being aware of online services, and about 26% reported using the services.

## 2.2 PROTESTS AND APPEALS

The workers' compensation system is meant to be a no fault system with simplified administration. Consequently, disputes should be relatively rare. When disputes arise, as they inevitably will, all parties to the dispute would like to see them resolved quickly and fairly.

We examined disputes as follows. First, how common are disputes? Second, are they disproportionately coming from one or more subsets of employers (Self-insured, Retro or Non-retro)? Third, when disputes arise, are they handled in a timely manner? Fourth, do the participants feel the process was fair?

### 2.2.1 Frequency

The number of claims with disputes on first glance seems high. Fully 1/3rd (32.7%) of claims in the survey had at least one dispute heard by L&I or BIIA. Over a quarter (27.9%) of sampled claims had an appeal of at least one decision by L&I. That decision could have been appealed by employer, provider or worker. By way of perspective, the 20,000 protests processed annually with L&I are approximately 15% of the total number of accepted claims.

There are several challenges with comparing our data with surveys done in other jurisdictions. First, we are focusing in this study on a subset of claims, those with medical costs > \$5,000. We narrowed the sample in this way to identify important and serious claims, claims that represent the 20% most complex and expensive claims, generating 80% of the system costs. Most jurisdictions and studies, when they narrow the sample to more serious claims use claims with lost-time, usually lost-time greater than 7 days. We based our selection on medical cost because we did not have the ability within the survey sample to identify lost time claims among both insured and self-insured employers. Also, because Washington aggressively promotes the use of Kept-on-Salary (KOS) as a way of improving return to work, many claims that have lost time in other states could be medical only cases in Washington. In addition, KOS is thought to be more aggressively used by Retro employers than non-retro employers, and possibly more aggressively by Self-insured employers. Therefore, focusing on lost-time duration might make any comparisons across insurance status misleading. We chose the selection criterion based on medical cost as the most appropriate for making samples comparable across different employer groups in WA. But this does come at the expense of making cross jurisdiction comparisons somewhat more difficult.

**Distribution of Disputes among Workers Surveyed (excluding denied claims)**

Dispute category	
Percent of claims with at least one Protest and/or Appeal (431)	29.4%
Percent of claims with Protest (476)	27.4%
Percent of claims with a protest where decision by L&I was appealed to BIIA (133)	27.6%
Percent of claims where dispute when directly to BIIA (29)	2.0%
Percent of disputes going directly to BIIA (29)	6.8%

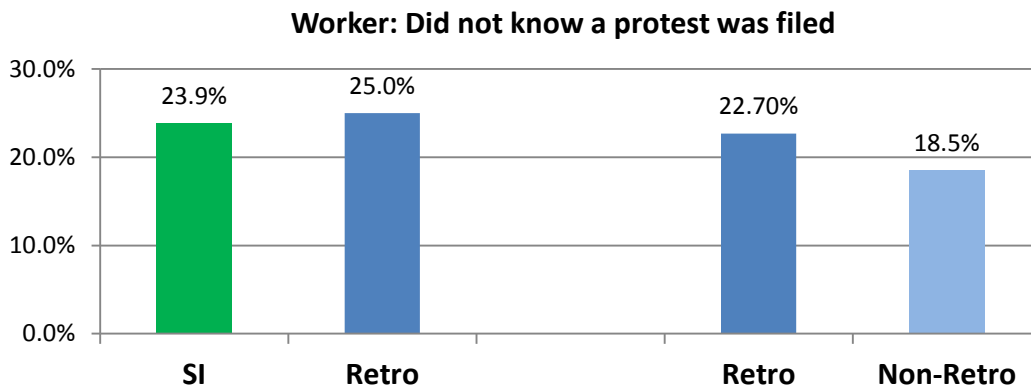
Note; this table excludes claims that were denied. A very high percentage of denied claims filed a protest.

**2.2.2 Worker perceptions of dispute process**

Given this background on the frequency of protests and the party bringing the protest or appeal, we now turn to the workers perceptions of how this process worked. That is, was it clear, timely and fair?

**2.2.2.1 Worker knowledge of protest**

One area that was surprising was the fraction of times workers were unaware that a protest was filed on their claim. A little over 1/5th of the time (21.2%), workers did not know a protest had been filed. This was evenly split across the different types of insurance status.



We suspect that the protests where the employee is unaware are primarily protests filed by the employer, but may also include protests by providers (e.g. medical provider). There are other options, such as the worker could have forgotten or been confused. Workers represented by a lawyer that handled the protest may be less involved. But it does raise concerns about how informed L&I is keeping workers on potentially critical issues when the protest is raised by the employer. Since L&I is required to inform both employers and workers when a protest is filed (and file review found consistent adherence to the requirement), an important reason that workers were confused on whether protests were filed may lie in the difficulty workers have in understanding the letters sent by L&I. The filing of a protest may



signal a need for L&I to communicate directly with the worker by phone to insure that the worker is fully informed on the issue in dispute.

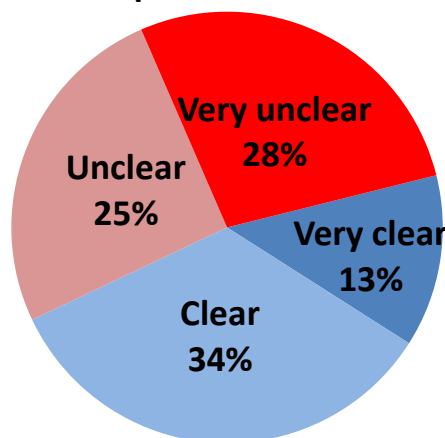
In the survey, when workers answered that they were unaware of the protest process, we did not ask the subsequent questions about their perceptions of the materials and fairness.

### 2.2.2.2 Perception of timeliness and clarity of the decision and protest process

We asked workers how clearly L&I explained their decisions. Only about half of workers (48.5%) felt that L&I explained these clearly. A smaller fraction (41.3%) felt the explanations were unclear. And about 10% were unsure. The “unsure” answers may be because multiple important decisions may be made on a claim.

We asked, "How well did L&I explain your options when you disagreed with a decision on your claim." We asked this question of any worker where there was at least one protest filed by the worker or employer.<sup>1</sup> A very important fraction of worker, more than half (53.2%) reported that L&I's explanation was "Unclear" or "Very unclear."

**Clarity of L&I Explanation of Protest Process**



This lack of clarity certainly is a cause of concern. The ability to pursue the dispute process is partly a product of understanding how to bring a case. We do not see in these data whether workers did not protest decisions because the process was too confusing. This might be an important problem if such a substantial fraction of workers find the dispute process so unclear. However, in defense of L&I, legal processes are almost complex. It is possible that L&I does at least as good a job as other jurisdictions, but the process is just inherently complex. One indication is that the level of education of the worker did not have any correlation to how well they did or did not understand the L&I explanations. This

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<sup>1</sup> This question was supposed to be triggered by the source of the protest = worker, but it appears that the coding was such that it was triggered by any protest, either employer or worker. Consequently, there was a substantial fraction (30%) of workers that answered they did not know a protest was filed. We drop these workers from the denominator since the question of clarity of explanation is not appropriate. This is also why Q50, about how well L&I explained the process when the employer protested, is blank, because it would have been triggered by an indication of an employer protest, but this was not identified in the data given the survey callers.

suggests that the problem is not in the level of the written materials or oral explanations, but rather something basic to the process.

Across the insurance statuses (self-insured, Retro, non-Retro) there was no difference in the fraction of workers reporting they found the process "Unclear" or "Very unclear". The fraction reporting each category was virtually identical for claims from each group of employers. This indicates that L&I and SI adjusters are at least uniformly handling explanations of the workers' disputes, from the perception of the workers.

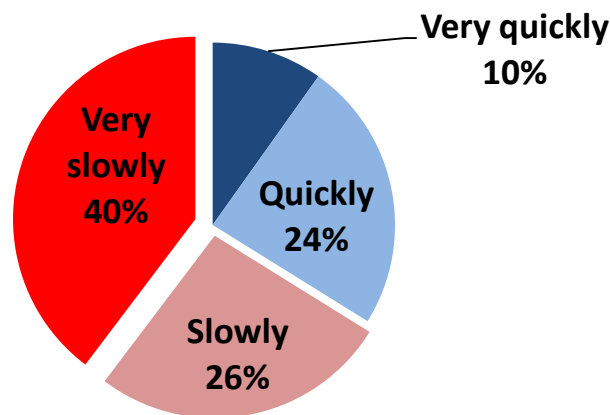
The written materials supplied by L&I to workers filing a protest appear to have been more useful than the overall clarity of the process as described just above. 60% of workers found the written materials "Somewhat" or "Very useful." Only a small portion (18%) did not find them useful at all.

We did not have detailed coding on the type of issue or issues in dispute. And this type of question is not very successful on surveys. But it is possible that certain types of disputes are more difficult for workers to understand and manage. It would be useful to go into more detail with L&I on the nature of the issues in dispute, but this is difficult because it is not well defined in the electronic data. If certain issues were especially problematic, special emphasis could be placed on redesigning these materials or extra attention and time focused on these workers in their interactions with L&I.

### 2.2.3 Timely resolution of protests

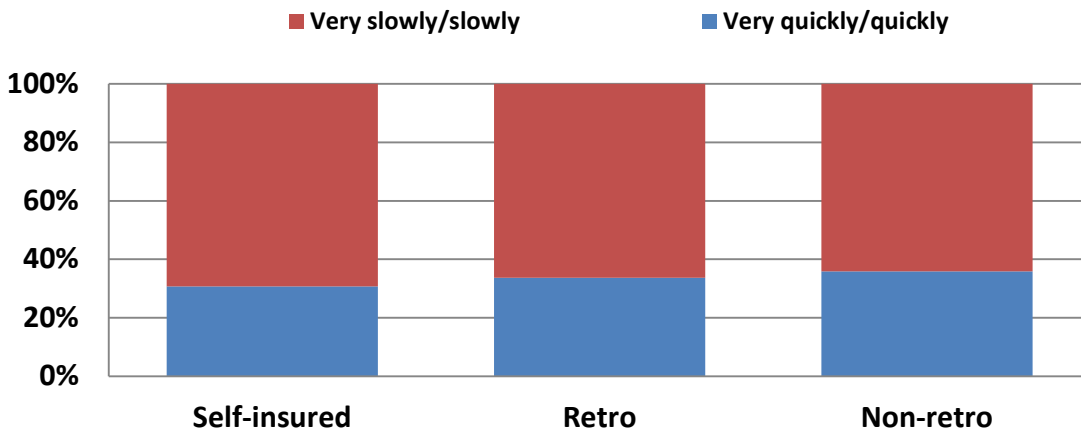
Workers' compensation dispute resolution is ideally a streamlined, administrative law system that can resolve disputes quickly. Unfortunately, this is not the perception of surveyed workers. Two-thirds of workers (66.2%) with a dispute felt that their dispute was resolve "Slowly" or "Very slowly," with "Very slowly" dominating these two answers.

**Q51 L&I Resolved Protest in a Timely Manner**



On this question, there was no difference in the responses across the different employer insurance statuses. For each group of employers, Self-insured, Retro-rated, and Non-retro, 2/3rds of workers were dissatisfied with the time required to resolve their disputes.

### Workers with Protests: Timeliness of Dispute Resolution



#### 2.2.4 "Fairness" of protest

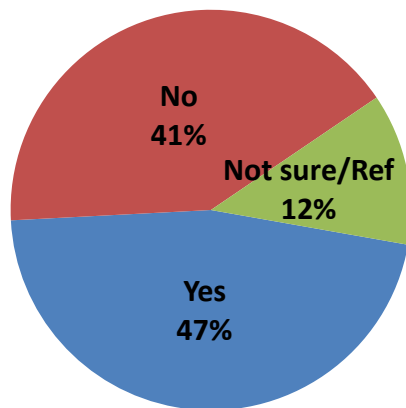
Fairness is a tricky concept to query workers about. The challenge is that "fairness" is a vague concept, or more precisely, it can be inexact, understood differently by different respondents, or both. In addition, the perception of fairness can be colored by the outcome of the dispute process.

We get at the issue of fairness by asking a series of three questions.

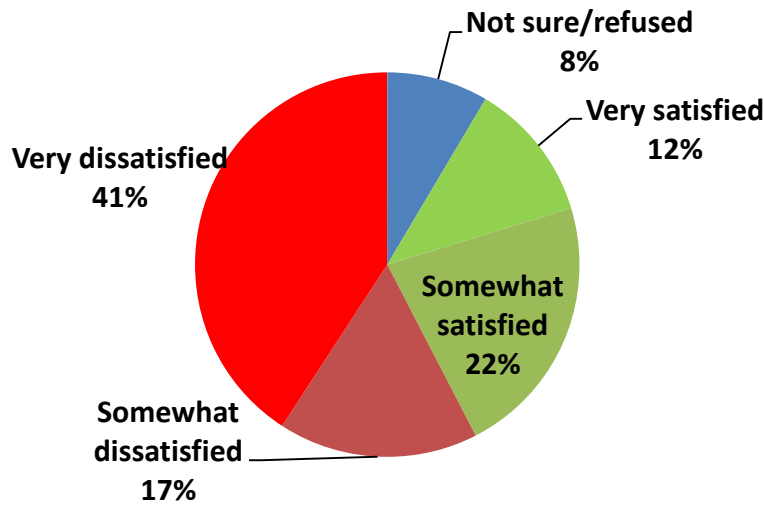
- Did the workers feel they had sufficient opportunity to present their case?
- Were the workers satisfied with the process?
- Were the workers satisfied with the outcome?

The concept of fairness should be considered in light of the answers to all three questions. Fortunately, the answers to the three questions are quite consistent. Note here that in most of these figures we include the fraction of workers answering "Don't know" or "Not sure". We do this here because unlike nearly all of the other questions, the fraction answering "Don't know" or "Not sure" is not trivial. This might be an indication of how difficult it is for workers to answer questions about the concepts.

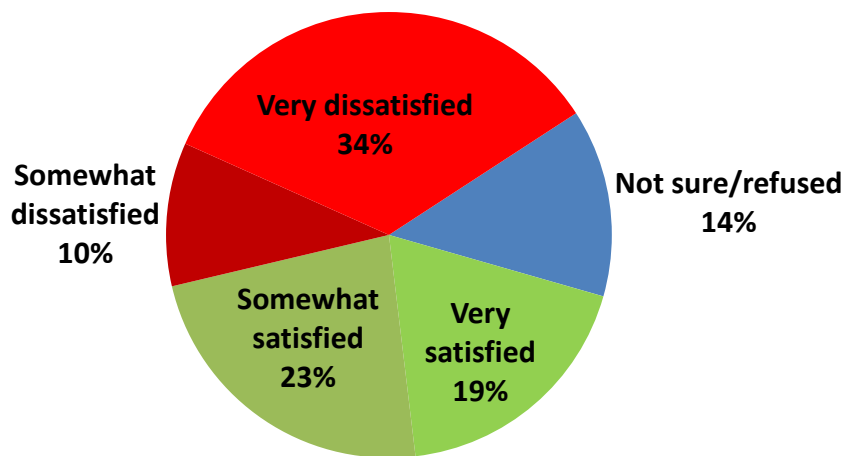
### Workers with Protests: Sufficient Opportunity to Present Case?



### Workers with Protests: Satisfied with Process?

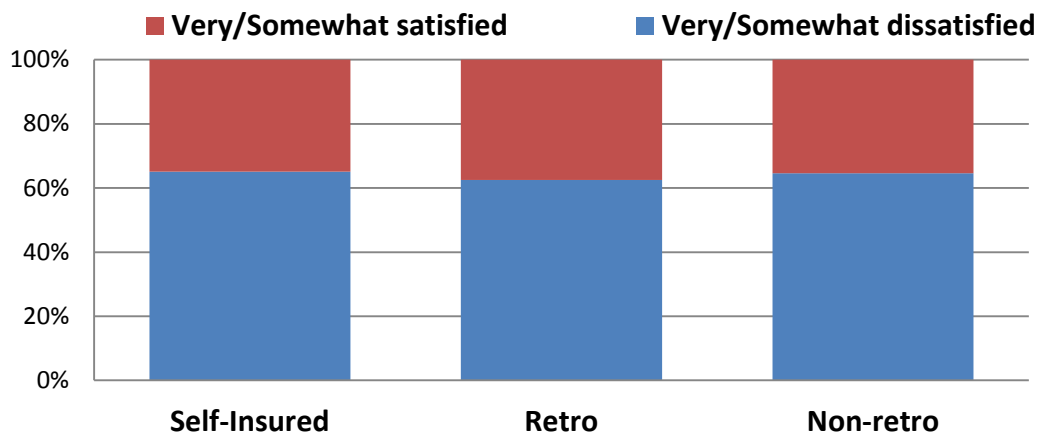


### Workers with Protests: Satisfied with Decision?



A concern of set forth in the audit design was whether workers' perceptions of the process and the fairness of the process are similar across different employer, by employer insurance status. Differences or similarities in the workers' perceptions could indicate that L&I (or L&I interacting with the employers/TPAs) may be handling claims differently (if workers' perceptions differed) or consistently (workers' perceptions similar) depending on the employer's insurance status. Here we find that workers' perceptions are very similar across the different categories of employers (Self-insured, Retro, Non-retro). This should be reassuring to JLARC and policymakers more generally. Below we present one of the questions by insurance status. The answers to the other questions were very similarly distributed.

### Workers with Protest: Satisfied by Process? (excluding don't know/refused)



In the above chart we aggregate the satisfaction categories in to two groups. This is done to simplify the presentation. Also, when we limit the sample to just those workers that knew about a protest and split those workers into three groups, we are getting smaller cell sizes and, consequently, more variance in the statistics. When split this way, it is clear that the perceptions of workers about the dispute process were virtually identical and statistically indistinguishable by insurance category.

#### 2.2.5 Attorney representation

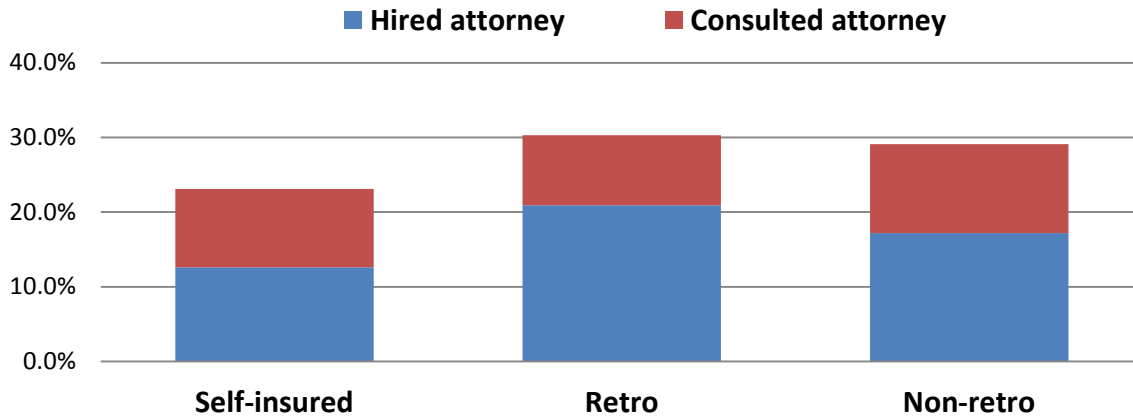
Workers’ compensation use administrative law to resolve disputes, which is intended to be more efficient and less formal than the regular court system. Attorney representation is often taken as an indication that the system is failing to limit disputes and to resolve disputes quickly and clearly when they occur. Administrative agencies often try to resolve disputes without attorney involvement through mediation or ombuds intervention. But, for some cases that come before administrative law judges, the injured worker with a dispute is encouraged to retain an attorney or get competent representation.

The survey respondents displayed a substantial fraction hiring attorneys. Approximately 17.5% of workers in the survey hired an attorney and an additional 10.9% consulted an attorney but did not ultimately hire one. This differed between insured and self-insured employers with about 12% of self-insured workers and 20% of insured workers hiring an attorney. For both groups, about 10% consulted but did not hire an attorney.<sup>2</sup>

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<sup>2</sup> By way of perspective, WCRI, CompScope 2012 shows 1% as the median value of 16 states for the percentage of claims with >\$500 in claimant legal expenses.

## Fraction of Workers Hiring or Consulting an Attorney



We asked an open-ended question about the why they hired or consulted with an attorney. The answers are hard to categorize exactly because the answers often indicated the frustration many workers felt that compelled them to visit an attorney. Text answers are hard to classify into strict criteria. Consequently, we will discuss the areas broadly without assigning exact percentages.

Several areas that stand out:

- **Confusion about the process.** Most commonly workers mentioned they consulted an attorney because they were confused about the claims process or the benefits they were entitled to. Closely related to confusion about the claims process, workers often mentioned consulting an attorney to clarify the extent of their rights to benefits.
- **Termination of indemnity benefits.** The termination of indemnity benefits seems to be a trigger for seeking an attorney. There may be confusion about how and why benefits end or transition to a different type of benefit. L&I might consider a proactive, direct contact with workers when benefits are going to end. To be efficient, these contacts might be limited to claims where the benefits have had durations greater than some threshold (e.g., 30 days) or some other claim characteristic or characteristics predict a higher probability of a dispute.
- **Medical treatment.** This is a very important trigger. It takes two forms, delays and denials. Many workers seeking an attorney indicated they were frustrated with the length of time it took to get approval for medical treatment. Another group sought an attorney after medical treatment was terminated and (in their perception) the claim closed. Ending medical treatment is not as easy a place to intervene, proactively, as the ending of a particular benefit. The ending of medical treatment tends to be much less precise. But, it might be important for claims managers to contact the worker directly when a decision is made to terminate medical treatment.
- **Additional body part.** There were a number of cases where the worker consulted an attorney because a 2nd body part was not allowed to be added to a claim. These appeared to be cases where the second body part was added after the claim had been open for some time. This might be another opportunity for the claims examiner to proactively contact the worker and explain why the additional body part is not being approved for treatment.
- **Denials.** Not surprisingly, a high fraction of workers who had their claim denied hired an attorney. Unlike workers that hire an attorney because of medical treatment issues, termination of benefits, or in hopes of speeding up the process, these workers are at risk of losing all, not just a fraction, of their benefits.

## 2.2.6 Impairment and IME

Methodological note: this section is designed to get the broad issues defined. The comparisons across SI, Retro & Non-retro are using the raw data, without the complete adjustment for matching. A full adjustment possibly would effect the comparison between SI & Retro and Retro and Non-retro. When the three groups are very similar in the statistics shown, matching adjustments are unlikely to matter. When there is a visible relationship, e.g., SI=>Retro=>Non-retro, differences may be reduced when we control more carefully for the matching.

Determining a worker's residual impairment after injury and any injury related permanent partial disability (PPD) indemnity payments is one of the most important and complex obligations of L&I. Measurement and indemnification of permanent disability is a complex process requiring training. Because of its complexity the mechanics of PPD determination will not be understood by the vast majority of workers. However, L&I has an obligation to assist workers in understanding their right to benefits. Not uncommonly, L&I's communication will involve explaining why they may not be eligible or eligible for a smaller benefit amount than expected.

We were interested in how well injured workers recovered from their injuries. When recovery leaves them with residual impairment we care about how well they understand the process and how they perceived the fairness of the determinations.

In addition, Washington handles the determination of PPD differently between insured employer and self-insured employers. For workers injured at insured employers, L&I assigns the Independent Medical Evaluator (IME) responsible for the determination of the existence and extent of impairment. These assignments are random, within certain limits. The random assignment is meant to protect both workers and employers by removing any monetary incentive for bias from the IMEs evaluation. Self-insured employers, on the other hand, have the ability to select IMEs of their choice.<sup>3</sup> Consequently, L&I needs to be sure that differences in the way IMEs are chosen does not result in differences in PPD benefits across workers.

Hence, we should be interested in:

- How frequently workers feel they have residual impairment after recovery.
- When they perceive residual impairment, how severe is the impairment.
- When they perceive impairment, did they get evaluated for the impairment.
- What type of doctor did the evaluation (Primary physician or IME).
- How clearly was the process of determination explained to the worker.
- Did the worker feel the evaluation of impairment was fair.
- Did evaluation of impairment result in ratings and indemnity payments that were independent of the insurance status of workers' employers.

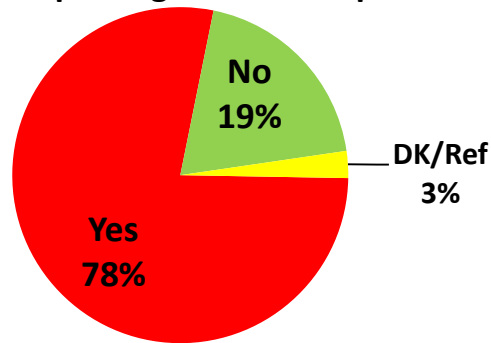
Some of these answers were surprising.

First, the number of workers reporting residual impairment, and especially “major” impairment was higher than anticipated. Almost 4/5ths of workers in the survey felt they had some residual impairment from their injury.

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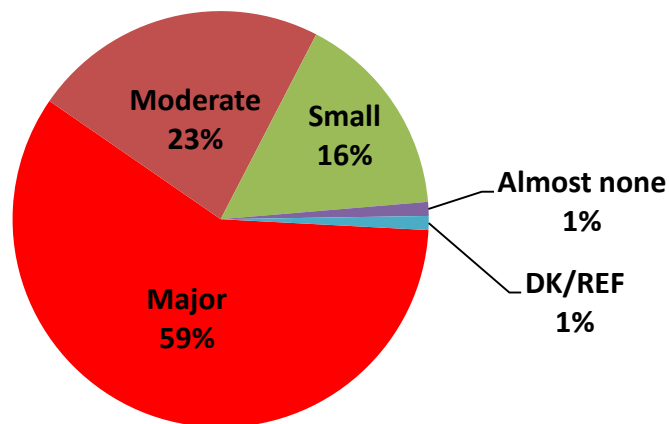
<sup>3</sup> RCW 51.36.070.

### Percent reporting Residual Impairment



Among those that believed they had a residual impairment, 82% reported that the impairment was “Major, affecting their work or daily life almost every day” (59%) or “Moderate” (23%). That is, 2/3rds of workers in the sample felt that their injury resulted in residual impairment that had a moderate to major impact on their work and/or daily life. Though coming from a sample of injured workers with relatively severe injuries, these numbers are quite striking. The sample we drew is for the 20% of claims with the highest medical cost, which is about equivalent in other jurisdictions to claims with more than 7 days last time. After almost 2 years of recovery, a major fraction of surveyed workers still feel that the injury imposes an important limitation on their functioning.<sup>4</sup>

### Severity of Impairment for those reporting impaired

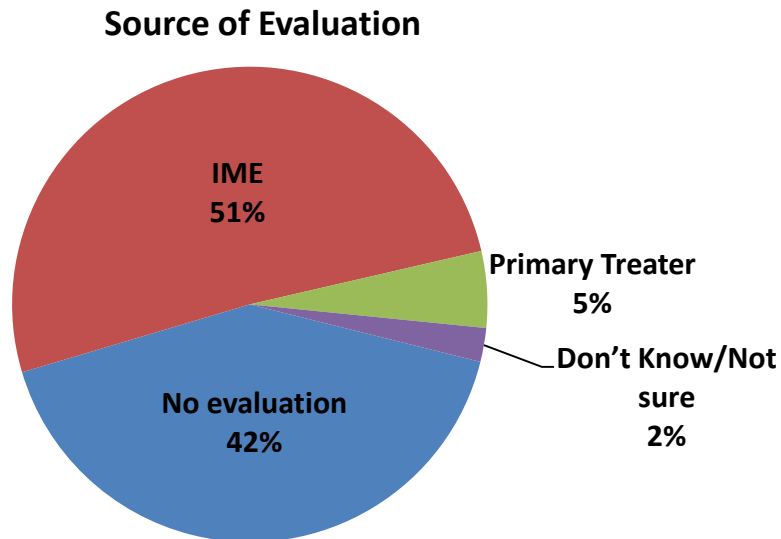


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<sup>4</sup> The researchers had internal discussions about the meaning of the large fraction (64%) reporting "Major" or "Moderate" residual impairment. This fraction seems quite high relative to the portion of workers awarded PPD in other states. In California, a notably generous state, the rating bureau typically finds 45% to 50% of indemnity claims receive a PPD award. An 8-state comparison by WCRI (not including California) identified North Carolina as the highest state at 39% of claims with >7 days lost time receiving a PPD award. Two factors may be at work. First, we are asking workers perceptions of their residual impairment, not how the system evaluated them against a legal definition. Second, workers with greater residual impairment may have been more motivated to respond to the survey. It is common in workers' compensation surveys for workers with the least severe injuries to be underrepresented. It is impossible to say that either or both of these explanations are responsible for a substantially higher fraction of workers reporting Moderate to Major residual impairment.



Given the high proportion of respondents with perceived impairments, it is even more important that they receive evaluations for their impairment and that the process is clear and fair.



A substantial fraction of workers that report either “Major” or “Moderate” impairment had not received an evaluation by the time of the survey. We expect that some of these workers will be evaluated in the future. But it still appears that a substantial fraction of workers who feel that they have a significant impairment did not, and may not, receive an evaluation. Without an evaluation, they may not be eligible for PPD benefits. This may also indicate a mismatch between how workers perceive the severity of their residual impairment and what is compensable under law. In any case, it would be important to follow-up on claims of workers that have not had an evaluation but report significant impairments.

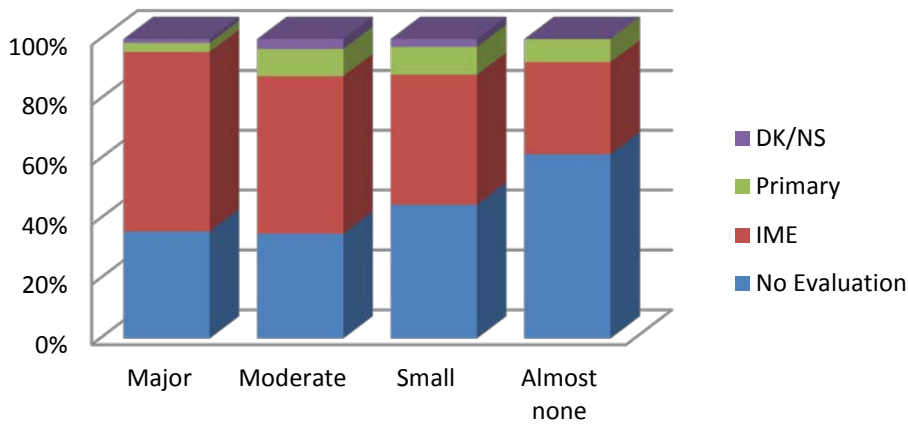
When evaluations are done, the vast majority are done by IMEs. Only a small fraction are done by the worker's primary treating physician and that fraction is even smaller when the impairment is more severe. Nearly all of the evaluations are being performed by doctors with special qualification for PPD measurement.<sup>5</sup> Providers are approved by L&I, after an application and review. They must be licensed to practice in:

- Medicine and surgery,
- Osteopathic medicine and surgery,
- Podiatric medicine and surgery,
- Chiropractic, or
- Dentistry.

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<sup>5</sup> See WAC 296-23-317, which describes the qualifications to become an IME provider to “ensure that independent medical examinations are of the highest quality and propriety.”

**Whether evaluated and source of evaluation  
(workers reporting any impairment)**



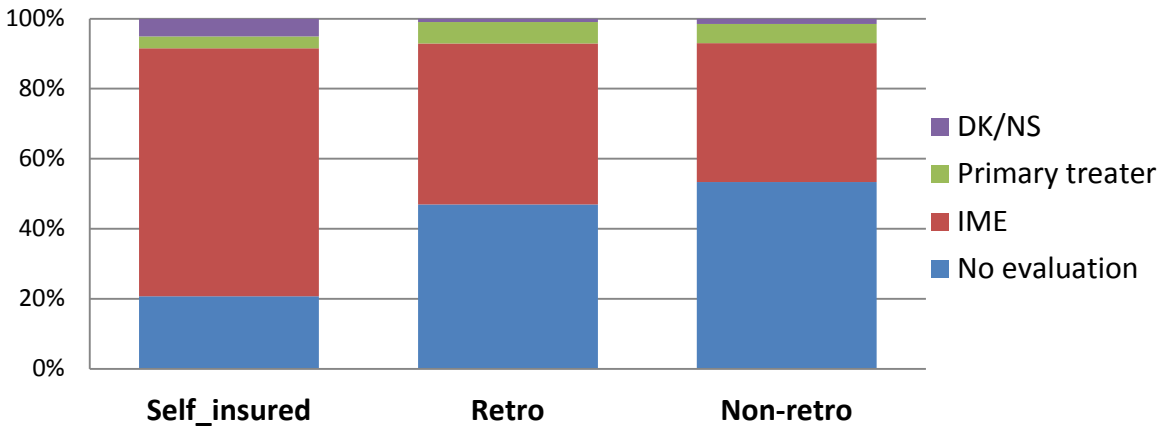
Interestingly, the fraction of workers reporting any impairment as well as the distribution of severity of impairments is identical across all three insurance statuses. Workers' injuries and the recovery of health after injury appear to be very similar, even when the employers have different insurance status and vary in size, claims handling by outside administrators, and internal human resources expertise.

On the other hand, the fraction of workers receiving an evaluation by the date of the survey is much higher at self-insured employers than at claims handled by L&I. Within the L&I insured, there are small differences between Retro and non-Retro employers, but these are not statistically significant.

This difference between Self-insured employer and insured employers can indicate at least three factors. First, self-insured employers' claims administrators may handle claims more quickly, moving up the timing of evaluations, so more are done prior to the survey. This would represent a timing issue, and as claims mature, the fraction receiving evaluations may be more comparable. One possibility is that because self-insured employer TPAs can select their choice of IMEs, they are able to do so much more quickly, all else equal, than L&I can arrange them for workers using L&I procedures. Also, IMEs may work harder to schedule appointments and complete evaluations quickly when future business depends on their reputation.

Second, Self-insured employers may pursue evaluations in a higher fraction of cases. This might be done to help resolve cases, handle return to work decisions or some other reason.

### Distribution of evaluation by Insurance Status (workers reporting impairment)

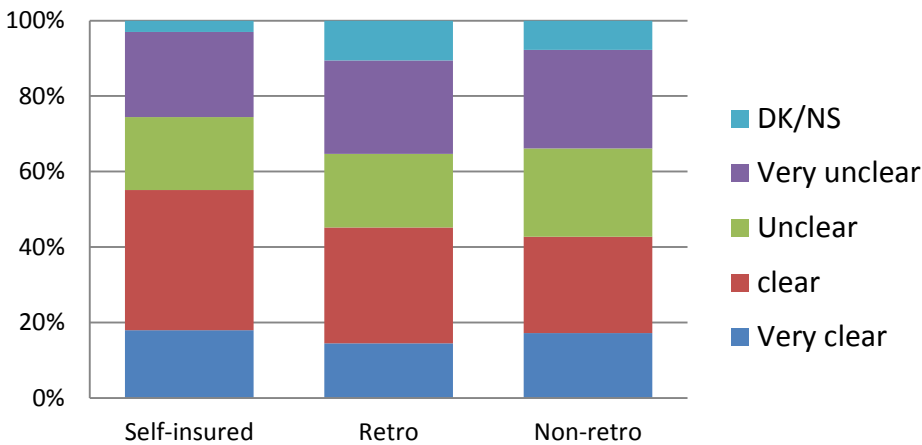


This also suggests directions for further research on the broader data on all claims available from the databases. Because the fraction of workers reporting any impairment and the distribution of severity among those reporting impairment is identical across all three insurance types, we should expect the PPD ratings and PPD indemnity should be very similar. We would hope that the ratings and indemnity would be very similar despite the greater control of the IME choice enjoyed by Self-insured employers. Across the large sample sizes in the full data sets, the measurement of PPD and indemnity should be very close given the very similar severity reported by workers.

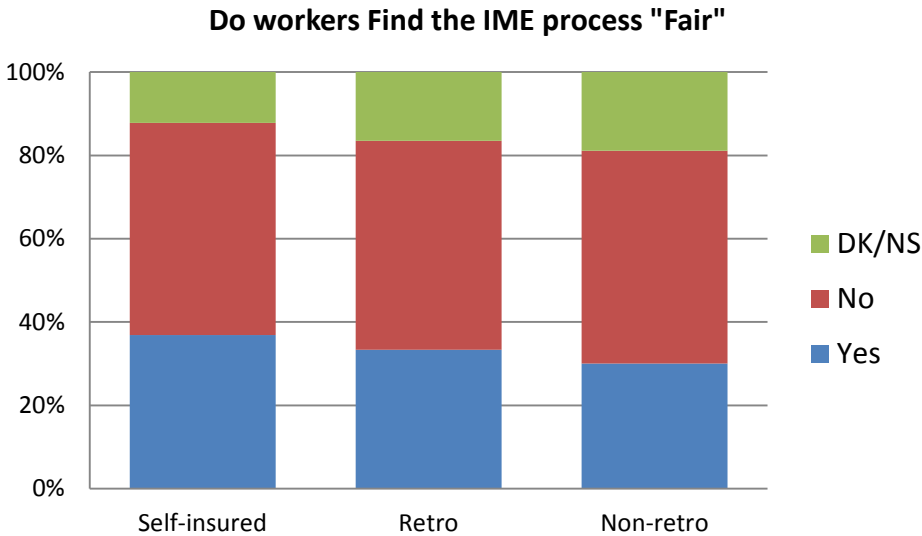
#### 2.2.7 Workers' perceptions on whether the IME process was clear and fair

It is important for injured workers to feel they understand the process and consider it fair. Both of these qualities share important roles in this process. In addition, it is important that workers across all types of employers (self-insured, retro and non-retro) share similar perceptions. We now examine these issues.

### Worker perception of the clarity of IME process (among workers having IME evaluations)



A substantial fraction of workers find the IME process “Unclear” or “Very unclear.” This is likely unsatisfactory to L&I. The PPD determination and the IME process are arcane and can be confusing even to experienced participants. But, the clarity of the process is important for empowering workers.

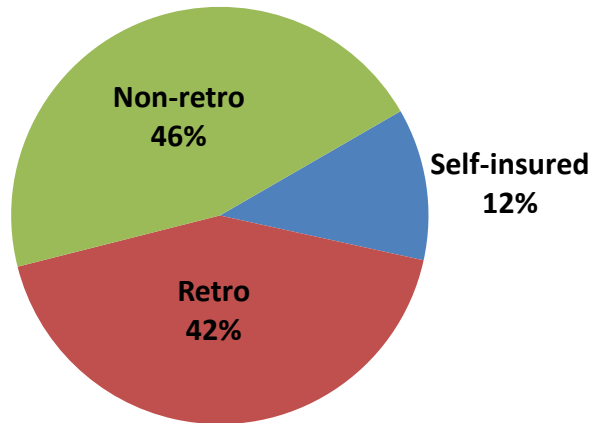


These numbers, again, are problematic. 2/3rds of workers reported they did not find the IME process fair or were unsure. Only 1/3<sup>rd</sup> reported it as fair. These high percentages may be driven by the lack of clarity in the process, as we observed just above. It might be also driven by the outcome of the IME evaluation, which could have been perceived by the worker as understating their injury. The numbers are equally poor for workers at all three types of employers by insurance status. The issue does not seem driven by the differences in the underlying claims handling between Self-insured TPAs or L&I, or based on Retro-group status. L&I and self-insured employer TPAs probably should make a stronger effort to understand why workers find the process so confusing and concentrate on improving those issues in written and personal communications. It might also be useful to consider how to manage workers’ expectations about eligibility for PPD indemnity and the size of awards. Often in legal processes, the only measures of outcomes participants are aware of are large settlements or awards that make the news. Consequently, participants can frequently over-estimate the expected settlement. Better upfront communication with participants can help. Communications could include information on the fraction of workers that receive benefits and the median award (average award, because a few large awards, will substantially overstate what a typical worker will receive).

### 2.3 DENIED CLAIMS

We used a stratified sampling strategy for accepted claims, stratifying by insurance type (self-insured, Retro, and non-Retro). For claims that were denied, we randomly sampled from among all claims where L&I denied the claim. The original sample gives us a close approximation of the fraction of denied claims that come from each type of insurance status:

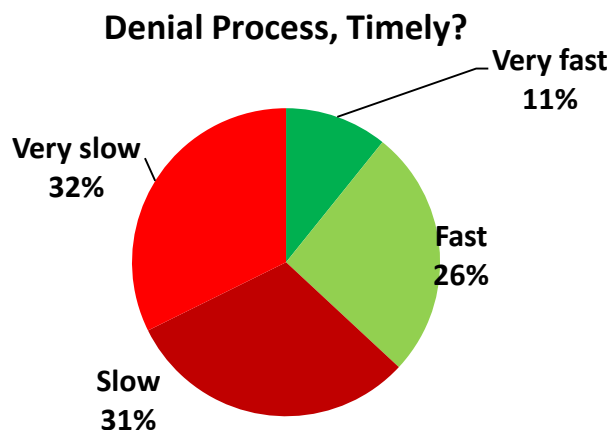
## Distribution of Denied Claims by Employer's Insurance Status



The respondents to the survey came more heavily from the Retro employer denied claims (62.7%) and Non-retro employer claims were under-represented (22.4%), while Self-insured respondents represented the approximate expected portion (14.9%).

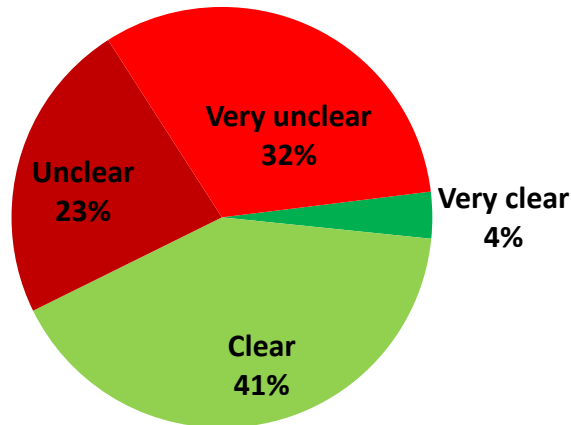
67 workers with denied claims completed the survey. Nine workers expressed an understanding that their claims were accepted, despite the indication in the L&I data. We dropped these workers from the denied claim sample because the questions were not appropriate. A possible explanation is that these workers have multiple claims and one or more were accepted, while the reference claim was denied.

The response of denied claimants to the survey questions about the performance of L&I should be carefully considered. When respondents with accepted claims filed a protest, their perceptions of the quality & fairness of the process appear affected by their perception of the decision (outcome). For these accepted claimants, the decision might have limited their benefits in some way, but that limitation was partial. For denied claimants, L&I's decision to deny the claim means benefits are completely eliminated. Consequently, we might expect that their perceptions of the process could be much more heavily affected by L&I's decision to deny the claim. However, the perceptions of workers whose claims were denied appear similar to those involved in a protest on an accepted claim.



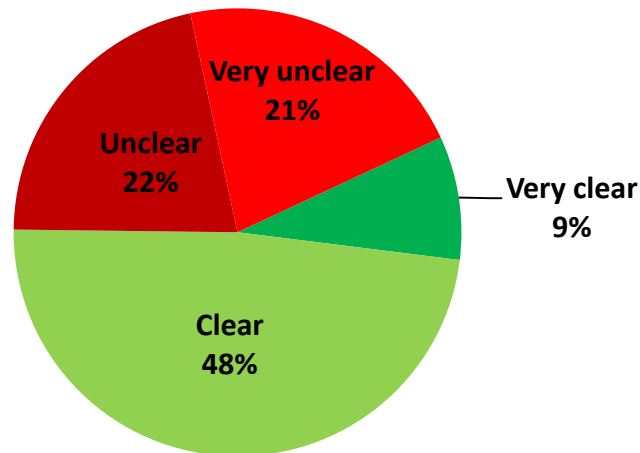
Timeliness of the denial process was consistent with the perceptions of workers filing protests on accepted claims. Timeliness of the legal process seems to be a concern, generally. But given that all of these workers lost this critical decision, it is surprisingly positive finding on L&I decision making that the perceptions about the occupational causation determination process were similar to other protests.

### Reason for Denial Clear?



Workers' perceptions of the clarity of the reasons given for the denial decision, again, are very similar to the perceptions of workers involved in protests. Given that all of these workers "lost" this critical decision, we might have expected their perceptions to be substantially more negative than for disputes on other issues.

### L&I Explanation of Options if Disagree with Decision



As described earlier, we were concerned that the outcome of a dispute would heavily influence the perception of the fairness of the dispute resolution process. Consequently, we chose a strategy of evaluating the fairness of the dispute process by examining the workers' (and employers') perceptions of parts of the process (e.g. timeliness, clarity of the decision and their understanding of what to do next if they disagree with the decision). This approach is well supported by the data presented above. For each of the areas examined above, workers who lost disputes about "allowance" had perceptions about

the components of the dispute resolution process that were very similar to those with other types of protests (where the worker prevailed an important fraction of the time). The outcome of the dispute had limited, if any, impact on the perception of the underlying components of the judicial process.

### 3 LOST TIME AND RETURN-TO-WORK

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Next we address other perceptions of the claims management process. The sampling process for the survey was different than the typical approach for surveys of this type. Most surveys focus exclusively on workers with a minimum amount of lost time indemnity payments, usually greater than 7 days lost time. For several reasons, this was not appropriate for surveying for Washington. Most importantly, we were not able to obtain reliable lost time data for self-insured employers. Second, salary continuance, known as Kept-on-Salary (KOS) in Washington is thought to be common, potentially eliminating an important set of otherwise similar claimants and injuries from the sample. Third, the use of KOS was expected to differ by insurance status (SI, R, & NR) and this could bias our sampling. Consequently, we selected workers for the survey based on paid medical exceeding a \$5000 threshold.

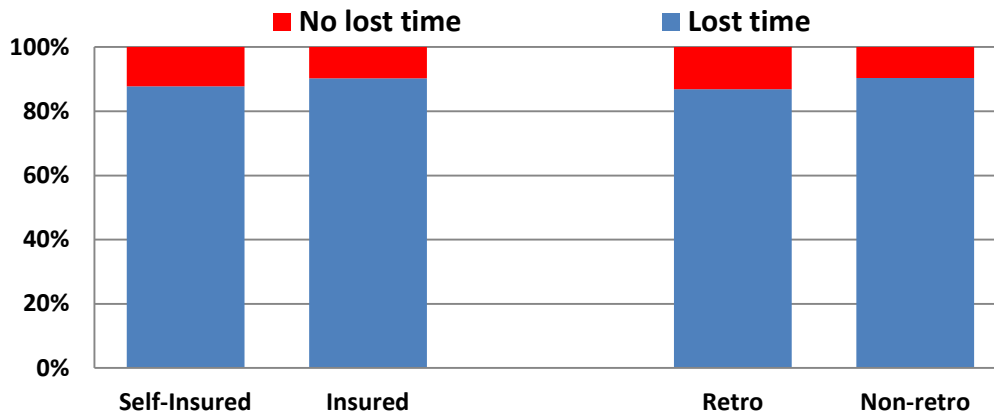
To identify all workers in the survey that experienced lost time greater than 3 days from those that had only medical costs, we used a three-step process. We included:

- All workers that had lost time reported by L&I (Fund employers only),
- Answered "Yes" to the question, "Did you miss 3 or more days of work due to your injury?" or
- Answered "Yes" to the question of whether their employer paid salary continuance.

Of the workers with accepted claims in the survey, 11.5% did not lose any time from work, despite having an injury or illness severe enough to generate very substantial medical treatment costs. The remaining 88.5% of accepted claims with lost-time will be the subset we use when examining return-to-work assistance. Thus, the responses are from injured workers with probably did not enjoy special income maintenance assistance (KOS) from their employers. ne strategy for improving stay at work/return to work is encouraging employers to pay salary continuance. Self-insured employers are thought to use KOS to help manage disability costs and total claim costs. Insured employers have an additional incentive in the form of minimizing their "experience rating," which is a factor in setting premiums. Lost-time claims count against experience, but if an employer pays salary in lieu of temporary total disability, the indemnity portion of the claim does not count against a firm's experience rating. While all insured employers share this incentive, it is thought that Retro employers make more frequent use of KOS because Retro groups' TPAs and administrators actively encouraging employers (sometimes as a condition of belonging to the group) to use KOS to keep firm and retro group costs down. Interviews with retro group administrators found that some Retro-rated groups make KOS a condition of participation in the group. Non-retro group employers may not be as knowledgeable about the potential savings from KOS. We examine how these assumptions play out in our survey results.

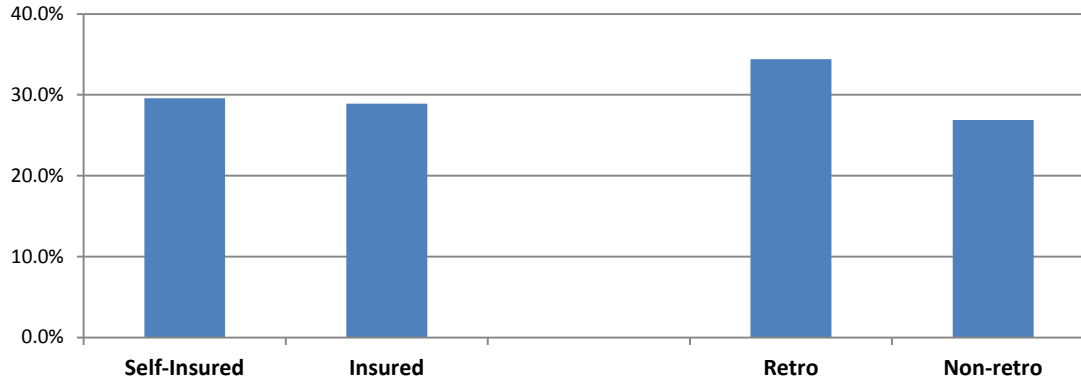
The fraction of claims with lost time is nearly identical across the different insurance statuses. Between 86.9% and 90.4% of claims in the sample had some lost time. There is no statistically significant variation by insurance status.

## Fraction of lost-time claims by insurance status



The fraction of claims receiving KOS is virtually identical across matched insured and self-insured employers, at about 30%. But the distribution is different within insured employers. Retro employers are more significantly more likely to use KOS, possibly reflecting the extra attention drawn to the advantage by retro-group administrators and explicit requirements to use KOS as a condition of membership in some groups. The percentages of KOS shown below are higher than the 18.4% of all State Fund LT claims shown by an L&I annual report to use KOS in 2013.

## Percent of Lost-time Claims Receiving KOS



As an important consideration, and it has not been established definitively, but most observers think that KOS improves outcomes for workers as well as reducing costs for employers. Workers, by maintaining their attachment to the workplace, are thought to recover more quickly, experience less actual lost time, and have a higher probability of remaining with the at-injury employer. If true, all of these factors are also associated with greater future labor force participation and higher future earnings. Consequently, the lesson here may be that L&I should consider aggressively promoting KOS at Non-retro employers in the way Retro groups promote it for insured employers. Or, L&I could increase the incentives built into the experience rating system to increase the incentive for all insured employers, especially non-retro employers, to broaden the use of KOS. We will explore the Stay-at-Work (SAW) program usage in the employer section. SAW represents a variation on KOS, but with a substantial subsidy by L&I.