



SUMMARY OF INITIATIVE 1082 TO THE PEOPLE

Concerning industrial insurance.

*This information has been prepared in response to specific questions about the provisions and effects of Initiative 1082 and is provided for legislative purposes only; it is **not** provided as an expression for or against the ballot measure. Please remember that it is inappropriate to use public resources to support or oppose a ballot measure. Please refer to the 2010 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

BRIEF SUMMARY

Industrial insurance, also known as workers' compensation, provides medical and non-medical benefits including wage replacement to workers injured in the course of their employment. Employers that maintain industrial insurance coverage generally cannot be sued for damages when an employee is injured on the job. Employers in Washington can either self-insure if they meet certain qualifications, or purchase industrial insurance through the Department of Labor and Industries (L&I). Initiative 1082 would allow Washington employers to purchase industrial insurance from private insurance companies.

BACKGROUND

Industrial insurance provides medical, wage replacement, and disability benefits to workers injured in the course of their employment. Industrial insurance coverage is mandatory, and employers that maintain coverage generally cannot be sued for damages when an employee suffers a work-related injury. Generally, all employers with in-state employees must either purchase industrial insurance through L&I, or be a certified self-insurer. L&I's industrial insurance system, known as the State Fund, is funded by premiums collected from both employers and employees. Self-insured employers assume all the risks and costs of industrial insurance and manage their own industrial insurance claims. Employers must have the financial ability to pay all compensation due and meet other criteria in order to be certified by L&I as a self-insurer.

L&I determines the basic industrial insurance premium for State Fund employers using the risk classification assigned to that employer. A risk classification refers to a type of business activity, and L&I assigns an employer to one or more risk classifications based on the type of the employer's business. There are approximately 300 risk classifications used by L&I, and each classification has its own basic premium rate, expressed as a dollar amount an employer will pay per worker-hour for each worker in that risk classification. In order to arrive at the total amount

of the industrial insurance premium due, an employer's hourly premium rate is multiplied by the number of workers' hours reported in that risk classification. L&I does not use employee wages in calculating the industrial insurance premium.

The hourly premium rate is actually a composite rate comprised of three separate components: the accident fund premium; the medical aid premium; and the supplemental pension assessment. The accident fund premium is paid entirely by employers and provides money to pay non-medical claim costs including wage replacement and disability pensions. The medical aid fund premium is paid equally by both employers and employees, and is used to pay for medical care for injured workers. Both the accident fund premium and medical aid premium are experience rated, or adjusted up or down based on the employer's industrial injury costs compared with the average costs of other employers in the same risk classification. The supplemental pension assessment is paid by both employers and employees and provides cost-of-living increases in pension and wage replacement benefits.

Washington State has a comprehensive set of statutes and rules promulgated by L&I that establish benefit levels for injured workers; describe the responsibilities of involved parties including workers, employers, and healthcare providers; and provide processes for making claim decisions and appealing those decisions. Benefits can be generally classified as medical and non-medical benefits. Medical benefits cover medical bills directly related to the workplace injury. Non-medical benefits cover wage replacement (known as time-loss), return-to-work services, and disability or pension awards. In order to receive initial and ongoing industrial insurance benefits, an injured worker must file a claim with L&I and complete all required paperwork throughout the duration of the claim.

When L&I makes a decision about a particular claim, notice is sent to both the injured worker and the employer. An employee or employer who disagrees with a decision may protest or request that L&I reconsider the decision, or appeal the decision to the Board of Industrial Insurance Appeals (BIIA) within 60 days of receipt of the notice. The BIIA is an independent state agency that hears and decides appeals of L&I decisions.

The Office of the Insurance Commissioner (OIC) regulates and oversees the insurance industry in Washington. Companies offering insurance products, including auto, homeowners, health, life, and title insurance, are subject to state insurance statutes and are regulated by the OIC. The OIC is funded by an administrative fee paid by all insurance companies operating in the state.

SUMMARY OF I-1082

Employers

Starting July 1, 2012, in addition to insuring with the State Fund or self-insuring, employers can obtain workers' compensation insurance individually, or as part of a group, from a licensed industrial insurance insurer.

Effective December 2, 2010, all employers are prohibited from collecting half of the medical aid premium from employees, and will be required to pay the entire medical aid premium.

Industrial insurers

Insurers offering to sell industrial insurance in Washington must provide coverage for industrial insurance benefits as currently established in statute and must hold a certificate of authority issued by the OIC. Groups of employers wanting to purchase group industrial insurance must meet the following criteria:

- All employers in the group are members of an organization that has been in existence for at least four years;
- The organization exists primarily for a purpose other than obtaining or offering industrial insurance coverage or insurance-related services;
- The group is composed of employers who are substantially similar considering the services or activities performed by the employees of those employers; and
- The formation and operation of the group program in the organization will improve accident prevention and claims management for the employers in the group.

Industrial insurers must notify the employer and injured worker of the following decisions: whether the insurer will pay benefits for any application within five days of making a decision; each time the insurer makes a decision to award time-loss and other non-medical benefits; and at no longer than 30 day intervals, of medical services approved or authorized under statutes establishing medical aid benefits. The notice provided by the insurer must include an explanation, in nontechnical language, of the potential impacts of the decision on the worker, the industrial insurance rates of the employer, and the worker's and employer's right to appeal the decision. The 60-day period to request reconsideration or appeal a decision of the insurer does not begin until the notice has been sent to the employer and injured worker.

Insurers must administer claims for time-loss and other non-medical benefits without involvement by L&I, subject to the right to appeal claim decisions to the BIIA and the courts.

The initiative provides that with respect to the rights and responsibilities of L&I under statutes establishing reconsideration and appeal processes and timelines, an insurer has the same rights and responsibilities as L&I.

Office of the Insurance Commissioner (OIC)

Under the initiative, the OIC is required to issue a certificate of authority to be an industrial insurer if the insurer meets the requirements to be licensed to sell insurance in Washington and meets the applicable provisions of the insurance and workers' compensation statutes.

Prior to issuing a certificate of authority to an industrial insurer, the OIC must certify that the insurer has the capacity to provide injured worker benefits, adequate safety engineering, loss prevention, and claims management services for all employers insured by the insurer. Certificates are not valid if the insurer fails to maintain an in-state location where applications for benefits may be made and maintained with the OIC, or fails to maintain a list of the locations and telephone numbers where information may be obtained about all appropriate matters relating to claims.

The OIC is also directed to designate a licensed rating organization¹ to file with the OIC a manual of classifications and rules, rating plans, policy forms and provisions, and a statistical plan which will provide data adequate for rate making. The licensed rating organization must file manual rates with the OIC, and the rates do not require preapproval prior to use. Every industrial insurer must be a member of the rating organization and adhere to the approved filings required under the initiative. Any member of the rating organization may make written application to OIC for approval of uniform percentage deviations from the manual rates filed by the rating organization.

The initiative provides that the OIC is to: perform all duties required under insurance statutes to ensure each insurer meets requirements of insurance and workers compensation statutes; establish an assigned risk plan for all industrial insurance insurers; and adopt rules regarding the issuance of certificates of approval, designation of a licensed rating organization, filing of rates, and establishment of an assigned risk plan.

Administrative costs of the OIC related to industrial insurance will be paid by an assessment on industrial insurers. The assessment of each individual insurer for administrative costs must be based on the ratio of each insurer's adjusted premium to the aggregated premium of all insurers. The initiative provides further guidelines for assessment calculations, and establishes a minimum and maximum assessment for insurers.

Department of Labor & Industries (L&I)

L&I must make available to the licensed rating organization the accident and loss experience records for the periods before the effective date of the initiative. L&I will be reimbursed by the licensed rating organization for the actual reasonable cost of reproduction and delivery of the records and data.

Calculation of Premium

The initiative provides that the exposure medium used by each insurer, self-insurer, or the State Fund to price their product shall be based on total payroll rather than reported worker hours, and is not subject to any payroll limitation.

Fund

The industrial insurance administrative revolving fund (fund) is created in the state treasury. The fund is administered by OIC and is established to provide for the payment of all expenses of the BIIA and the OIC with respect to the administration of their respective duties under the initiative. Any money appropriated from the state general fund for the uses and purposes of the administrative fund must be placed in the administrative fund.

Task Force

¹ "Licensed rating organization" is not defined in the text of the initiative. Generically, a rating organization is an entity that compiles data from multiple insurance companies and then uses the aggregated data to develop rates to be used by insurers who are members of the organization. Rating organizations are licensed by the OIC under chapter 48.19 RCW.

A Joint Legislative Task Force on Private Competition for Industrial Insurance (Task Force) is created. The Task Force consists of 12 members appointed by the Lieutenant Governor as follows:

- One member from the House of Representatives;
- One member from the Senate;
- Four members representing employers, including at least one member from a small employer, one representing an association with a retrospective rating program, and one from a self-insured employer;
- Two members representing industrial insurance insurers; and
- Four members representing employees, including at least one employee from a self-insured employer, and one employee from a small employer.

The Task Force is to work with OIC and L&I to develop proposed legislation to conform current statutes to the provisions of the initiative. The Task Force is to provide recommendations to Legislature by December 1, 2011, and it expires on completion of recommendations and transition of Washington's industrial insurance to a competitive market, but no later than December 31, 2012. The initiative directs the Legislature to adopt supplemental legislation as necessary to fully implement the policy directives of the initiative by March 1, 2012.

For further information please contact:

Mac Nicholson, 786-7445

Senate Labor, Commerce and Consumer Protection Committee