

# Rules of Practice and Procedure



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## Chapter 263-12 WAC PRACTICE AND PROCEDURE

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**WAC 263-12-005 Purpose.** The purpose of this chapter is to promulgate rules concerning the board's practice and procedure pursuant to RCW 51.52.020 and to comply with RCW 42.56.040 through 42.56.520 and chapter 40.14 RCW pertaining to public records.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-005, filed 12/5/18, effective 1/5/19; WSR 91-13-038, § 263-12-005, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-005, filed 4/4/75.]

**WAC 263-12-007 Application of chapter.** Unless otherwise provided, the rules of practice and procedure set forth in this chapter are applicable to appeals filed with the board of industrial insurance appeals.

[Statutory Authority: RCW 51.52.020. 91-13-038, § 263-12-007, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. 86-03-021 (Order 20), § 263-12-007, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-007, filed 12/2/82.]

**WAC 263-12-010 Function and jurisdiction.** It is the function of the board as an agency to review, hold hearings on, and decide appeals filed from final orders, decisions or awards of the department of labor and industries. The jurisdiction of the board extends to:

- (1) Appeals arising under the Industrial Insurance Act (Title 51 RCW);
- (2) Appeals arising under the Crime Victims Compensation Act (chapter 7.68 RCW);
- (3) Appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW);
- (4) Appeals from assessments issued under the Worker and Community Right to Know Act (chapter 49.70 RCW);
- (5) Appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects;
- (6) Appeals arising under chapter 49.22 RCW concerning safety procedures in late night retail establishments; and (7) Appeals arising under RCW 41.26.048 concerning the death of a law enforcement officer or firefighter in the course of employment.

[Statutory Authority: RCW 51.52.020. 98-20-109, § 263-12-010, filed 10/7/98, effective 11/7/98; 91-13-038, § 263-12-010, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-010, filed 4/4/75; Order 4, § 263-12-010, filed 6/9/72; General Order 3, § 1, filed 10/29/65; General Order 2, § 1, filed 6/12/63; General Order 1, § 1, filed 3/23/60. Formerly WAC 296-12-010.]

**WAC 263-12-015 Administration and organization.**

(1) **Composition of the board.** The board is an independent agency of the state of Washington composed of three members appointed by the governor. One member is a representative of workers, one member is a representative of employers, and the chairperson, who must be an active member of the Washington State Bar, is the representative of the public.

(2) **Location of the board.** The headquarters, and principal office of the board, is located at 2430 Chandler Ct. S.W., PO Box 42401, in Olympia, Washington 98504-2401.

(3) **Customary office hours.** The customary office hours of the board shall be from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

(4) **Formal board meetings.** The board shall meet in formal session at its headquarters in Olympia, Washington at 9 a.m. on the first Tuesday of each month, and at such other times and places as the board may deem necessary, subject to 24-hour notice as required by law.

(5) **Staff organization.**

(a) The board's headquarters in Olympia is staffed with executive, administrative and clerical personnel.

(b) The board has a staff of industrial appeals judges who travel throughout the state in the performance of their duties and who have their offices in Olympia and in other areas of the state as is deemed necessary for efficient and cost effective handling of agency business.

(c) The office of the chief legal officer of the board is located at the headquarters and principal office of the board.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-015, filed 7/14/21, effective 8/14/21; 98-20-109, § 263-12-015, filed 10/7/98, effective 11/7/98; 95-02-065, § 263-12-015, filed 1/3/95, effective 2/3/95; 91-13-038, § 263-12-015, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. 86-03-021 (Order 20), § 263-12-015, filed 1/10/86. Statutory Authority: RCW 51.52.020. 84-02-024 (Order 15), § 263-12-015, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-015, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-015, filed 1/18/82; Order 10, § 263-12-015, filed 4/5/76; Order 7, § 263-12-015, filed 4/4/75; Order 4, § 263-12-015, filed 6/9/72; General Order 2, § 2, filed 6/12/63; General Order 1, § 2, filed 3/23/60; General Order 3, Subsection 4, filed 10/29/65. Formerly WAC 296-12-015.]

**WAC 263-12-01501 Communications and filing with the board.**

(1) **Where to file communications with the board.** Except as provided elsewhere in this section all written communications shall be filed with the board at its headquarters in Olympia, Washington. With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board by using one of four methods: Personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods selected by the party for use under this section, or as otherwise set forth in these rules or statute for filing written communications may prevent consideration of a document.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) **Filing by telephone facsimile.**

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's website.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(iv) The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(v) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's website. Communication sent by email will not constitute or accomplish filing. Communication filed using the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's website. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(4) **Electronic filing of application for approval of claim resolution settlement agreement.** An application for approval of claim resolution settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution settlement agreement as provided on the board's website. An electronic application for approval of claim resolution settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution settlement agreement has been received. An electronic copy of the signed agreement for claim resolution settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the chief legal officer of the board.

(6) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be served on all other parties or their representatives of record, and the original shall demonstrate compliance with the requirement to serve all parties. All written communications with the board shall be on paper 8 1/2" x 11" in size.

[Statutory Authority: RCW 51.52.020, WSR 22-14-024, § 263-12-01501, filed 6/24/22, effective 7/25/22; WSR 21-15-042, § 263-12-01501, filed 7/14/21, effective 8/14/21; WSR 18-24-123, § 263-12-01501, filed 12/5/18, effective 1/5/19; WSR 17-24-121, § 263-12-01501, filed 12/6/17, effective 1/6/18; WSR 16-24-054, § 263-12-01501, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-01501, filed 12/2/14, effective 1/2/15; WSR 11-23-154, § 263-12-01501, filed 11/22/11, effective 12/23/11; WSR 10-14-061, § 263-12-01501, filed 6/30/10, effective 7/31/10; WSR 06-12-003, § 263-12-01501, filed 5/25/06, effective 6/25/06; WSR 04-22-047, § 263-12-01501, filed 10/28/04, effective 11/28/04; WSR 04-16-097, § 263-12-01501, filed 8/3/04, effective 9/3/04; WSR 98-20-109, § 263-12-01501, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-01501, filed 6/14/91, effective 7/15/91.]

#### **WAC 263-12-016 Public records – Location.**

(1) Public records available. All public records of the board as defined in chapter 42.56 RCW are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.56.210 through 42.56.470.

(2) General information concerning the board may be obtained at its headquarters, 2430 Chandler Ct. S.W., P.O. Box 42401, Olympia, Washington 98504-2401.

(3) Public records officer. The public records officer shall be responsible for the following: The implementation of the board's rules and regulations regarding release of public records, coordinating the staff of the board in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.56 RCW.

(4) Indices are available providing identifying information as to the following: (a) Final decisions and orders of the board, including concurring and dissenting opinions; (b) proposed decisions and orders of the board's industrial appeals judges; (c) in addition, any indices maintained for intra-agency use are available for public inspection and copying.

(5) No fee will be charged for inspection of public records. Inspection will be during office hours, upon request and by appointment with the public records officer, in a space provided by the board and must be accomplished without excessive interference with the essential functions of the agency, and without causing damage or disorganization to public records.

(6) A fee shall be charged for copies of documents made with the board's equipment in an amount necessary to cover the cost to the agency of providing such service.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-016, filed 12/5/18, effective 1/5/19; WSR 08-01-081, § 263-12-016, filed 12/17/07, effective 1/17/08; WSR 00-23-021, § 263-12-016, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-016, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-016, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-016, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-016, filed 1/18/82; Order 10, § 263-12-016, filed 4/5/76; Order 7, § 263-12-016, filed 4/4/75.]

#### **WAC 263-12-017 Request for public records.**

(1) In accordance with requirements of chapter 42.56 RCW, the board will make nonexempt "public records" available for inspection and copying.

(2) A request to inspect or copy public records should be made in writing through the records officer email address shown on the board web site upon the board's request form, which is available at its Olympia headquarters or its web site. The form may be presented to the public records officer, or to any member of the board's staff, if the public records officer is not available, at the headquarters of the board during customary office hours. The form may also be mailed, faxed, or e-mailed to the attention of the public records officer at the address or fax number provided on the board's web site.

The request should include the following information:

(a) The name and address of the person requesting the record and any other contact information, such as phone number or e-mail address, that may aid in responding to the request;

(b) The date the request is made;

(c) The identity of the record(s) requested. If the record(s) requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index should be included whenever possible. If the requested record(s) is not identifiable by reference to the board's current index, as detailed a description as possible should be included to aid staff in identifying the records sought; and

(d) Whether the request is for copies or to inspect records.

(3) Requestors desiring copies of records shall make arrangements with the records officer to pay for the cost of providing the records. Costs shall include the cost of copies and the cost of mailing the records. The per page cost for standard size (8 1/2" x 11") black and white or color photocopies will be as posted on the board's web site. Nonstandard-sized documents and documents produced on something other than paper will be provided at the actual cost to reproduce and may include the cost of the materials used. Mailing cost will include actual postage and the cost of the container.

(4) Requestors desiring to inspect records shall make arrangements with the records officer for inspection. There is no cost to inspect records. Records will be made available for inspection at the board's Olympia headquarters during the board's customary office hours.

(5) In all cases in which a member of the public is making a request, the public records officer or staff member to whom the request is made will assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-017, filed 12/5/18, effective 1/5/19; WSR 14-24-105, § 263-12-017, filed 12/2/14, effective 1/2/15; WSR 91-13-038, § 263-12-017, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-017, filed 1/10/86.]

#### **WAC 263-12-01701 Copying fees—Payments.**

(1) The following copying fees and payment procedures apply to requests to the board under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the board is not calculating all actual costs for copying records because it would be unduly burdensome for the following reasons:

(a) The board does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(3) The board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The board will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the board may charge other copying fees authorized by statutes outside of chapter 42.56 RCW. The board may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the board are summarized in the fee schedule available on the board's web site at [www.biia.wa.gov](http://www.biia.wa.gov).

(4) Requestors are required to pay for copies in advance of receiving records.

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule; or

(iii) The amount that could be charged is considered de minimis.

(b) Requested fee waivers are an exception and will be considered only upon receipt of a written request to the public records officer. Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees exceed twenty-five dollars for an installment, an entire request, or customized service charge.

(6) All required fees or deposits must be paid in advance of release of the copies or an installment of copies. The office will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the board of industrial insurance appeals. The board prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-01701, filed 12/5/18, effective 1/5/19; WSR 17-24-121, § 263-12-01701, filed 12/6/17, effective 1/6/18.]

#### **WAC 263-12-018 Public records – Exemptions.**

(1) The board shall determine which public records requested in accordance with these rules are exempt under the provisions of RCW 42.56.210 through 42.56.470.

(2) Pursuant to RCW 42.56.050, the board may delete identifying details when it makes available or publishes any public record in any case where there is reason to believe that disclosure of such details would be an invasion of personal privacy.

(3) Denials of requests for public records will be accompanied by a written statement specifying the reason for the denial. A statement of the specific exemption in chapter 42.56 RCW or other statute authorizing withholding the record and a brief explanation of how the exemption applies to the record held will be included.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-018, filed 12/5/18, effective 1/5/19; WSR 08-01-081, § 263-12-018, filed 12/17/07, effective 1/17/08. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-018, filed 1/10/86; Order 7, § 263-12-018, filed 4/4/75.]

#### **WAC 263-12-019 Review of denials of public records requests.**

(1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the board. The board shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the receipt of the request for review.

(3) Administrative remedies shall not be considered exhausted until the board has returned the petition with a decision or until the close of the second business day following receipt of the request for review, whichever occurs first.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-019, filed 12/5/18, effective 1/5/19. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-019, filed 1/10/86.]

#### **WAC 263-12-020 Appearances of parties before the board.**

(1) **Who may appear?** Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by a representative as described in subsections (3) and (4) of this section.

(2) **Who must obtain approval prior to representing a party?** A person who is disbarred, resigns in lieu of discipline, or is presently suspended from the practice of law in any jurisdiction, or has previously been denied admission to the bar in any jurisdiction for reasons other than failure to pass a bar examination, shall not represent a party without the prior approval of the board. A written petition for approval shall be filed 60 calendar days prior to any event for which the person seeks to appear as a representative. The board may deny any petition that fails to demonstrate competence, moral character, or fitness.

##### **(3) Who may represent a party?**

(a) A worker or beneficiary may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative so long as the person does not charge a fee, is not otherwise compensated for the representation except as provided in (a)(iv) of this subsection, and files a declaration or affidavit with the board certifying compliance with this rule. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(iv) A lay representative employed by the worker's labor union whose duties include handling industrial insurance matters for the union, provided the person files a declaration or affidavit with the board certifying this status. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(v) Any lay representative seeking to represent a worker or beneficiary who has not provided the certification required under (a)(iii) and (iv) of this subsection will be excluded from serving as a worker's or beneficiary's representative.

(b) An employer or retrospective rating group may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative who is a corporate officer or an employee of the employer or retrospective rating group.

(iv) A firm that contracts with the employer or retrospective rating group to handle matters pertaining to industrial insurance.

(c) The department of labor and industries may be represented by:

(i) An attorney employed as assistant attorney general or appointed as a special assistant attorney general.

(ii) A paralegal supervised by an assistant attorney general or special assistant attorney general.

(iii) An employee of the department of labor and industries designated by the director, or his or her designee, in a claim resolution settlement agreement under RCW 51.04.063.

(d) A licensed legal intern may represent any party consistent with Washington state admission to practice rule 9(e).

#### **(4) Appeals under the Washington Industrial Safety and Health Act.**

(a) In an appeal by an employee or employee representative under the Washington Industrial Safety and Health Act, the cited employer may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(b) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(c) A lay representative appearing on behalf of an employee or an employee representative in an appeal under the Washington Industrial Safety and Health Act is not subject to the compensation restrictions of subsection (3) of this section.

(5) **May a self-represented party be accompanied by another person?** Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures. If the lay person is also a witness to the proceeding, the industrial appeals judge may exclude the lay person from the proceeding as provided by Evidence Rule 615.

(6) **Assistance by the industrial appeals judge.** Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure to be followed and the issues involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

#### **(7) How to make an appearance.**

(a) Appearance by employer representative. Within 14 days of receipt of an order granting appeal, any representative of an employer or retrospective rating group must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(b) Appearances by a worker or beneficiary representative shall be made either by:

(i) Filing a written notice of appearance with the board containing the name of the party to be represented, and the name and address of the representative; or by

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

#### **(8) Notice to other parties.**

(a) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(b) The board will serve all of its notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(9) **Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal is subject to approval by the industrial appeals judge or the chief legal officer. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(10) **Conduct.** All persons appearing as counsel or representatives in proceedings before the board or before its industrial appeals judges shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.



(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

- (i) Admonish or reprimand such person.
- (ii) Exclude such person from further participation or adjourn the proceeding.
- (iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.
- (iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

- (i) A letter of reprimand.
- (ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges.

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immediate action in order to preserve the orderly disposition of the appeal(s).

(c) Proceedings. If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the industrial appeals judge may, at his or her discretion and depending on all the circumstances:

- (i) Admonish or reprimand such person.
- (ii) Exclude such person from further participation or adjourn the proceeding.
- (iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.
- (iv) Report the matter to the board for action consistent with (b) of this subsection.

[Statutory Authority: RCW 51.52.020. WSR 22-14-024, § 263-12-020, filed 6/24/22, effective 7/25/22; WSR 21-15-042, § 263-12-020, filed 7/14/21, effective 8/14/21; WSR 16-24-054, § 263-12-020, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-020, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-020, filed 6/30/10, effective 7/31/10; WSR 04-16-009, § 263-12-020, filed 7/22/04, effective 8/22/04; WSR 00-23-021, § 263-12-020, filed 11/7/00, effective 12/8/00; WSR 98-20-109, § 263-12-020, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-020, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-020, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-020, filed 1/18/82; Order 7, § 263-12-020, filed 4/4/75; Order 6, § 263-12-020, filed 9/29/72; Order 4, § 263-12-020, filed 6/9/72; General Order 2, § 3.1, filed 6/12/63; General Order 1, filed 3/23/60; General Order 3, § 3.1(b), Subsection (2), filed 10/29/65.]

#### **WAC 263-12-045 Industrial appeals judges.**

(1) **Definition.** Whenever used in these rules, the term "industrial appeals judge" shall include any member of the board, the chief legal officer, and any duly authorized industrial appeals judge assigned to conduct a conference or hearing.

(2) **Duties and powers.** It shall be the duty of the industrial appeals judge to conduct conferences or hearings in cases assigned to him or her in an impartial and orderly manner. The industrial appeals judge shall have the authority, subject to the other provisions of these rules:

- (a) To administer oaths and affirmations;
- (b) To issue subpoenas on request of any party or on his or her motion. Subpoenas may be issued to compel:
  - (i) The attendance and testimony of witnesses at hearing and/or deposition, or
  - (ii) The production of books, papers, documents, and other evidence for discovery requests or proceedings before the board;
- (c) To rule on all objections and motions including those pertaining to matters of discovery or procedure;
- (d) To rule on all offers of proof and receive relevant evidence;
- (e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;
- (f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal, including the obtaining of physical, mental, or vocational examinations or evaluations of workers;
- (g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;
- (h) To issue orders joining other parties, on motion of any party, or on his or her own motion when it appears that such other parties may have an interest in or may be affected by the proceedings;
- (i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;
- (j) To schedule the presentation of evidence and the filing of pleadings, including the filing of perpetuation depositions;
- (k) To close the record on the completion of the taking of all evidence and the filing of pleadings and perpetuation depositions. In the event that the parties do not confirm witnesses or present their evidence within the timelines prescribed by the judge, the judge may consider appropriate sanctions, including closing the record and issuing a proposed decision and order;
- (l) To take any other action necessary and authorized by these rules and the law.

(3) **Interlocutory review.** A party may request interlocutory review pursuant to WAC 263-12-115(6) of any exercise of authority by the industrial appeals judge under this rule.

(4) **Substitution of industrial appeals judge.** At any time the board or a chief industrial appeals judge or designee may substitute one industrial appeals judge for another in any given appeal.

(5) **Pro tem industrial appeals judge.** If the board or the chief industrial appeals judge determines that there may be a conflict of interest for an industrial appeals judge to hear a particular appeal or when it is necessary to ensure an appearance of fairness or respond to workload variations, the board may appoint a pro tem industrial appeals judge to preside over the appeal and, if necessary, issue a proposed decision and order.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-045, filed 7/14/21, effective 8/14/21; 06-12-003, § 263-12-045, filed 5/25/06, effective 6/25/06; 03-02-038, § 263-12-045, filed 12/24/02, effective 1/24/03; 00-23-021, § 263-12-045, filed 11/7/00, effective 12/8/00; 91-13-038, § 263-12-045, filed 6/14/91, effective 7/15/91; 84-02-024 (Order 15), § 263-12-045, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-045, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-045, filed 1/18/82; Order 8, § 263-12-045, filed 5/2/75; Order 7, § 263-12-045, filed 4/4/75; Order 4, § 263-12-045, filed 6/9/72; Rules 4.1 - 4.3, filed 6/12/63.]

**WAC 263-12-050 Contents of notice of appeal.** The board's jurisdiction shall be invoked by filing a written notice of appeal.

(1) **General rule.** In all appeals, the notice of appeal should contain where applicable:

(a) The name, mailing address, telephone number, and email and address of the appealing party and of the party's representative, if any;

(b) A statement identifying the date and content of the department order, decision or award being appealed. This requirement may be satisfied by attaching a copy of the order, decision or award;

(c) The reason why the appealing party considers such order, decision or award to be unjust or unlawful;

(d) A statement of facts in full detail in support of each stated reason;

(e) The specific nature and extent of the relief sought;

(f) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held;

(g) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true;

(h) The signature of the appealing party or the party's representative.

(2) **Industrial insurance appeals.** In appeals arising under the Industrial Insurance Act (Title 51 RCW), the notice of appeal should also contain:

(a) The name and address of the injured worker;

(b) The name and address of the worker's employer at the time the injury occurred;

(c) In the case of occupational disease, the name and address of all employers in whose employment the worker was allegedly exposed to conditions that gave rise to the occupational disease;

(d) The nature of the injury or occupational disease;

(e) The time when and the place where the injury occurred or the occupational disease arose.

(3) **Crime Victims' Compensation Act.** In appeals arising under the Crime Victims' Compensation Act (chapter 7.68 RCW), the notice of appeal should also contain:

(a) The time when and the place where the criminal act occurred;

(b) The name and address of the alleged perpetrator of the crime; and

(c) The nature of the injury.

(4) **Assessment appeals.** In appeals from a notice of assessment arising under chapter 51.48 RCW or in cases arising from an assessment under the Worker and Community Right to Know Act (chapter 49.70 RCW), the notice of appeal should also contain:

(a) A statement setting forth with particularity the reason for the appeal; and

(b) The amounts, if any, that the party admits are due.

(5) **LEOFF and public employee death benefit appeals.** In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Firefighters' Retirement System (chapter 41.26 RCW), the notice of appeal should also contain:

(a) The time when and the place where the death occurred; and

(b) The name and address of the decedent's employer at the time the injury occurred.

(6) **Asbestos certification appeals.** In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects, the notice of appeal should also contain:

(a) A statement identifying the certification decision appealed from;

(b) The reason why the appealing party considers such certification decision to be incorrect.

(7) **WISHA appeals.** For appeals arising under the safety and health provisions of the Washington Industrial Safety and Health Act, refer to WAC 263-12-059.

(8) **WISHA discrimination appeals.** For appeals arising under the discrimination provisions of the Washington Industrial Safety and Health Act, refer to WAC 263-12-05901.

(9) **Other safety appeals.** In appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation or violations;

(c) If applicable, a statement certifying compliance with WAC 263-12-059.

[Statutory Authority: RCW 51.52.020. WSR 22-19-009, § 263-12-050, filed 9/9/22, effective 10/10/22; WSR 14-24-105, § 263-12-050, filed 12/2/14, effective 1/2/15; WSR 11-20-003, § 263-12-050, filed 9/21/11, effective 10/22/11; WSR 04-16-009, § 263-12-050, filed 7/22/04, effective 8/22/04; WSR 03-02-038, § 263-12-050, filed 12/24/02, effective 1/24/03; WSR 01-09-031, § 263-12-050, filed 4/11/01, effective 5/12/01; WSR 00-23-021, § 263-12-050, filed 11/7/00, effective

12/8/00; WSR 91-13-038, § 263-12-050, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-050, filed 1/10/86. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-050, filed 1/18/82; Order 7, § 263-12-050, filed 4/4/75; Order 4, § 263-12-050, filed 6/9/72; Rule 5.1, filed 6/12/63; Rules 3.1 - 3.2, filed 3/23/60, amended by General Order 3, Rule 5.1, filed 10/29/65. Formerly WAC 296-12-050.]

**WAC 263-12-052 Contents of claim resolution settlement agreement.** A claim resolution settlement agreement shall be submitted electronically with a signed copy of the agreement. If the worker is not represented by an attorney, the agreement shall address all of the following information. If the worker is represented by an attorney, the agreement does not need to address the information requested in subsections (6) through (9) of this section:

- (1) The names and mailing addresses of the parties to the agreement;
  - (2) The date of birth of the worker;
  - (3) The date the claim was received by the department or the self-insured employer, and the claim number;
  - (4) The date of the order allowing the claim and the date the order became final. If the date of the order is unknown, a statement that the claim has been filed longer than one hundred eighty days prior and allowance of the claim became final;
  - (5) The payment schedule and amounts to be paid through the claim resolution settlement agreement;
  - (6) The nature and extent of the injuries and disabilities of the worker and the conditions accepted and segregated in the claim;
  - (7) The life expectancy of the worker;
  - (8) Other benefits the worker is receiving or is entitled to receive and the effect that a claim resolution settlement agreement may have on those benefits;
  - (9) The marital or domestic partnership status of the worker;
  - (10) The number of dependents, if any, the worker has;
  - (11)(a) The worker knows that he/she has the right to:
    - (i) Continue to receive all the benefits for which they are eligible under this title;
    - (ii) Participate in vocational training if eligible; or
    - (iii) Resolve their claim with a settlement;
  - (b) All parties have signed the agreement. If a state fund employer has not signed the agreement, a statement that:
    - (i) The cost of the settlement will no longer be included in the calculation of the employer's experience factor used to determine premiums; or
    - (ii) The employer cannot be located; or
    - (iii) The employer is no longer in business; or
    - (iv) The employer failed to respond or declined to participate after timely notice of the claim resolution settlement process provided by the department;
  - (c) The parties are seeking approval by the board of the agreement;
  - (d) The agreement binds parties with regard to all aspects of the claim except medical benefits;
  - (e) The periodic payment schedule is equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;
  - (f) The agreement does not set aside or reverse an allowance order;
  - (g) The agreement does not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim;
  - (h) The agreement does not subject any department funds covered under the title to any responsibility or burden without prior approval from the director or his/her designee;
  - (i) The unrepresented worker or beneficiary of a self-insured employer was informed that he/she may request that the office of the ombudsman for self-insured injured workers provide assistance or be present during the negotiations;
  - (j) The claim will remain open for treatment or that the claim will be closed;
  - (k) The worker will either be required to or not be required to demonstrate aggravation as contemplated by RCW 51.32.160 if the worker applies to reopen the claim;
  - (l) The parties understand and agree to the terms of the agreement;
  - (m) The parties have entered into the agreement knowingly and willingly, without harassment or coercion;
  - (n) The parties have represented the facts and the law to each other to the best of their knowledge;
  - (o) The parties believe that the agreement is reasonable under the circumstances;
  - (p) The parties know that they may revoke consent to the agreement by providing written notice to the other parties and the board within thirty days after the agreement is approved by the board;
  - (q) The designation of the party that will apply for approval with the board;
  - (r) Restrictions on the assignment, if any, of rights and benefits under the claim resolution settlement agreement.
- (12) If the agreement impacts any claim with a currently active appeal, the proceedings in the appeal will be stayed without further order. Unless the agreement specifies otherwise and the agreement is approved, the appeal will be dismissed after the expiration of the revocation period specified in RCW 51.04.063(6).

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-052, filed 7/14/21, effective 8/14/21; WSR 14-24-105, § 263-12-052, filed 12/2/14, effective 1/2/15; WSR 11-23-154, § 263-12-052, filed 11/22/11, effective 12/23/11.]

**WAC 263-12-05301 Amendments of claim resolution settlement agreement.** Amendments to claim resolution settlement agreements are permitted without the requirement to refile the agreement when requested prior to approval or rejection by the board of the claim resolution settlement agreement and signed consent to the amendment is obtained from all original signatories. In such cases the board's approval or rejection will specify the amendments made to the original agreement.

**WAC 263-12-054 Petition to enforce terms of claim resolution settlement agreement.** A petition to enforce the terms of a claim resolution settlement agreement must include:

- (1) A copy of the agreement;
- (2) A copy of the board order approving the agreement;
- (3) A statement setting forth the basis for the parties' failure to comply with the agreement; and
- (4) The current mailing address of each party to the agreement.

[Statutory Authority: RCW 51.52.020. WSR 22-14-024, § 263-12-054, filed 6/24/22, effective 7/25/22; 11-23-154, § 263-12-054, filed 11/22/11, effective 12/23/11.]

**WAC 263-12-059 Appeals arising under the safety and health provisions of the Washington Industrial Safety and Health Act; contents of notice of appeal; notice to affected employees; request for stay of abatement pending appeal.**

(1) **Contents of notice of appeal in WISHA appeals.** In all appeals arising under the safety and health provisions of the Washington Industrial Safety and Health Act, the notice of appeal should contain where applicable:

- (a) The name, mailing address, telephone number, and email address of the appealing party and of the party's representative, if any.
- (b) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or notice of abatement date.
- (c) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s). If the employer has no affected employees who are members of a union, the employer shall affirmatively certify that no union employees are affected by the appeal.
- (d) The reason why the appealing party considers such order or decision, to be unjust or unlawful.
- (e) A statement of facts in full detail in support of each stated reason.
- (f) The specific nature and extent of the relief sought.
- (g) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.
- (h) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.

(i) The signature of the appealing party or the party's representative.

In all appeals where a stay of abatement of alleged violation(s) pending appeal is requested, the notice of appeal must comply with additional requirements set forth in subsection (3) of this section.

(2) **Employer duty to notify affected employees.**

(a) In the case of any appeal by an employer concerning an alleged violation of the safety and health provisions of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either:

- (i) Providing copies of the appeal and applicable division of safety and health citation and notice or corrective notice of redetermination to each employee member of the employer's safety committee; or
- (ii) By posting a copy of the appeal and applicable division of safety and health citation and notice or corrective notice of redetermination in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

(b) The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

(c) The employer shall file with the board a certificate of proof of compliance with this section within 14 days of issuance of the board's notice of filing of appeal. A certification form is provided on the board's web site.

(d) If notice as required by this subsection is not possible or has not been satisfied, the employer shall notify the board in writing of the reasons for noncompliance or impossibility. If the board, or its designee, determines that it is not possible for the employer to provide the required notice to employees, it will prescribe the terms and conditions of a substitute procedure reasonably calculated to give notice to affected employees, or may waive the affected-employee-notice requirement. If the employer requests a stay of abatement pending appeal, and desires to assert the claim of impossibility of notice to employees, the employer must include its claim of impossibility, together with facts showing impossibility, in its notice of appeal.

(3) **Request for a stay of abatement in WISHA appeals.**

(a) **How made.** Any request for stay of abatement pending appeal must be included in the notice of appeal. An employer may request a stay of abatement pending appeal by placing "STAY OF ABATEMENT REQUESTED" prominently on the first page of the notice of appeal in bold print. The board will issue a final decision on such requests within 45 working days of the board's notice of filing of appeal.

(b) **Union information.**

(i) **Appeals from corrective notice of redetermination.** In appeals where the employer has requested a stay of abatement of the violation(s) alleged in the corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall affirmatively inform the board that no union employees are affected by the appeal.

(ii) **Appeals from citation and notice.** Where an employer files an appeal from a citation and notice and the department of labor and industries chooses to forward the appeal to the board to be treated as an appeal to the board, the employer

shall provide the board with the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall inform the board that no union employees are affected by the appeal. The employer shall provide this information to the board within 14 days of the date of the board's notice of filing of appeal.

**(c) Supporting and opposing documents.**

(i) **Supporting documents.** In appeals where the employer has requested a stay of abatement pursuant to RCW 49.17.140, the employer shall, within 14 calendar days of the date of the board's notice of filing of appeal, file with the board supporting declarations, affidavits, and documents it wishes the board to consider in deciding the request. The employer must also simultaneously provide supporting documents to the department and any affected employees' safety committee or union representative. Supporting affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(ii) **Opposing documents.** Within 28 calendar days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file with the board any declarations, affidavits, and documents they wish the board to consider in deciding the request. The department must also simultaneously serve these opposing documents on the employer and any affected employees' safety committee or representative. The employees must also simultaneously serve the opposing documents on the employer and the department. Supporting and opposing affidavits and declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(4) **Denial of request to stay abatement.** If any of the following procedural or substantive grounds are present, the board will deny the request for a stay of abatement pending appeal:

(a) The request for stay of abatement is not contained in the employer's notice of appeal as required by RCW 49.17.140 (4)(a).

(b) The employer fails to include union information as required in subsection (3)(b) of this section.

(c) The employer fails to timely file a certification that its employees have been notified about the appeal and the request for stay of abatement as required in subsection (2) of this section.

(d) The employer fails to file supporting documents within 14 calendar days of the issuance of the board's notice of filing of appeal as required in subsection (3)(c)(i) of this section.

(e) The request is moot.

(f) The only violation alleged by the department of labor and industries is a general violation.

(g) The employer fails to show good cause for a stay of abatement in its supporting documents.

(h) The preliminary evidence shows it is more likely than not that a stay would result in death or serious physical harm to a worker.

(5) **Expedited nature of requests to stay abatement/requests to enlarge time.** Requests to stay abatement pending appeal must be decided in accordance with a strict statutory timeline. Oral argument will not be permitted. The board will grant requests to enlarge time to file documents or certifications only after receipt of a written motion with supporting affidavit filed with the board and all other parties before the filing deadline and only upon a showing of good cause.

[Statutory Authority: RCW 51.52.020. WSR 22-19-009, § 263-12-059, filed 9/9/22, effective 10/10/22; WSR 17-24-121, § 263-12-059, filed 12/6/17, effective 1/6/18. Statutory Authority: RCW 51.52.020. WSR 16-24-054, § 263-12-059, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-059, filed 12/2/14, effective 1/2/15; WSR 11-20-003, § 263-12-059, filed 9/21/11, effective 10/22/11; WSR 03-02-038, § 263-12-059, filed 12/24/02, effective 1/24/03; WSR 01-09-032, § 263-12-059, filed 4/11/01, effective 5/12/01.]

**WAC 263-12-05901 Discrimination appeals arising under RCW 49.17.160 of the Washington Industrial Safety and Health Act—Contents of notice of appeal.** In all appeals arising under the discrimination provisions of the Washington Industrial Safety and Health Act, RCW 49.17.160, the notice of appeal should contain where applicable:

(1) The name, mailing address, telephone number, and email address of the employee who filed the complaint with the department and their representative, if any.

(2) The name, mailing address, telephone number, and email address of the cited employer or business and their representative, if any.

(3) A statement identifying the citation number, penalty assessment, or appropriate relief order being appealed. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or order of appropriate relief.

(4) The reason why the appealing party considers the citation, penalty, or appropriate relief decision to be wrong.

(5) A statement of facts in full detail in support of each stated reason.

- (6) The specific nature and extent of the relief sought.
- (7) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.
- (8) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.
- (9) The signature and date of the appealing party or the party's representative.

[Statutory Authority: RCW 51.52.020. WSR 22-19-009, § 263-12-05901, filed 9/9/22, effective 10/10/22.]

**WAC 263-12-060 Filing appeals – Limitation of time.**

(1) In cases arising under the Industrial Insurance Act, or the Worker and Community Right to Know Act, the notice of appeal shall be filed within sixty days from the date the copy of the order, decision or award of the department was received by the appealing party, except an appeal from an order or decision making demand for repayment of sums paid to a provider of medical, dental, vocational or other health services shall be filed within 20 days from the date the order or decision was received by the provider.

(2) In appeals arising under the Crime Victims Compensation Act (chapter 7.68 RCW), the notice of appeal shall be filed within 90 days from the date the copy of the order, decision or award of the department was received by the appealing party.

(3) In appeals from a notice of assessment arising under chapter 51.48 RCW, the notice of appeal shall be filed within 30 days from the date the notice of assessment was served.

(4) There are two types of appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW).

(a) For safety and health appeals from a citation and notice, follow the provisions in RCW 49.17.140(4). The appeal shall be initiated by giving the director of the department of labor and industries notice of intent to appeal within 15 working days from the date of notification of such citation, abatement period or penalty assessment.

(b) For discrimination appeals, follow the provisions in RCW 49.17.160(6). An employer's appeal of a citation shall be initiated by giving the director of the department of labor and industries notice of intent to appeal within 30 days from the date of notification of such citation. A complainant's appeal from an order of appropriate relief shall be initiated by giving the director of the department of labor and industries notice of intent to appeal within 15 working days from the date of the order.

(c) If the director does not reassume jurisdiction over the matter to which notice of intent to appeal is given, the department shall promptly transmit the notice of intent to appeal together with the department's record in the matter to the board, whereupon the matter shall be deemed an appeal before the board. If the director reassumes jurisdiction pursuant to a notice of intent to appeal, there shall be, within 30 working days of such reassumption or within the extended redetermination period up to an additional 45 working days upon agreement of all parties to the appeal, a further determinative order issued in the matter. Any appeal from such further determinative order must be made directly to the board, with a copy filed with the director of the department, within 15 working days from the date of notification of such further determinative order.

(5) In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects or in appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal shall be filed in the manner and within the time allowed for filing appeals under RCW 49.17.140 and WAC 263-12-060(4).

(6) In appeals arising under the special death benefit provision of the law enforcement officers' and firefighters' retirement system (chapter 41.26 RCW), the notice of appeal shall be filed within 60 days from the date the copy of the order, decision or award of the department was received by the appealing party.

(7) The board shall forthwith acknowledge receipt of any appeal filed with the board and the board's stamp placed thereon shall be prima facie evidence of the date of receipt. The board may thereafter require additional copies to be filed.

[Statutory Authority: RCW 51.52.020. WSR 22-19-009, § 263-12-060, filed 9/9/22, effective 10/10/22; WSR 03-02-038, § 263-12-060, filed 12/24/02, effective 1/24/03; 00-23-021, § 263-12-060, filed 11/7/00, effective 12/8/00; 91-13-038, § 263-12-060, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. 86-03-021 (Order 20), § 263-12-060, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-060, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-060, filed 1/18/82; Order 7, § 263-12-060, filed 4/4/75; Order 4, § 263-12-060, filed 6/9/72; Rule 5.3, filed 6/12/63; Rule 3.3, filed 3/23/60; Rule 5.3, amended by General Order 3, filed 10/29/65. Formerly WAC 296-12-055.]

**WAC 263-12-065 Disposition on department record.** In cases arising under the Industrial Insurance Act, the Worker and Community Right to Know Act, and the Crime Victims Compensation Act, the board may, within the times prescribed by RCW 51.52.090, enter an order making final disposition of an appeal, without prejudice to any party's right to appeal from any subsequent order, decision or award issued by the department, based solely upon review of the notice of appeal and the record of the department in the case, as follows:

(1) If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised therein, the board may deny the appeal and affirm the department's decision or award; or

(2) If the department's record sustains the contention of the appealing party, the board may allow the relief asked in such appeal;

(3) If the appeal is brought prior to the taking of appealable action or issuance of an appealable order, decision or award by the department, the board may deny the appeal;

(4) If the department has (a) held the order, decision or award under appeal in abeyance or modified, reversed or changed the order, decision or award under appeal within the time limited for appeal or within thirty days after receiving a

notice of appeal, or (b) directed the submission of further evidence within the time limited for filing a notice of appeal, the board may deny the appeal on the basis that the appealing party is no longer aggrieved by the order, decision or award under appeal; or

(5) If an employer has filed an appeal from a notice of assessment, and the department, within thirty days after receiving a notice of appeal, modifies, reverses or changes any notice of assessment or holds any such notice of assessment in abeyance pending further investigation the board may deny the appeal.

[Statutory Authority: RCW 51.52.020. 03-02-038, § 263-12-065, filed 12/24/02, effective 1/24/03; 91-13-038, § 263-12-065, filed 6/14/91, effective 7/15/91; 82-03-031 (Order 11), § 263-12-065, filed 1/18/82; Order 7, § 263-12-065, filed 4/4/75; Order 4, § 263-12-065, filed 6/9/72; Rule 5.4, filed 6/12/63. Formerly WAC 296-12-065.]

**WAC 263-12-070 Granting the appeal.** If the appeal is not disposed of pursuant to WAC 263-12-065, the appeal shall be granted and proceedings scheduled. The board shall forthwith notify all interested parties of the receipt and granting of the appeal, and shall forward a copy thereof to the other interested parties. If the board takes no action upon the appeal within the time allowed by RCW 51.52.090, it shall be deemed to have been granted.

[Statutory Authority: RCW 51.52.020. 91-13-038, § 263-12-070, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-070, filed 4/4/75; Order 4, § 263-12-070, filed 6/9/72; Rule 5.5, filed 6/12/63. Formerly WAC 296-12-070.]

**WAC 263-12-075 Cross appeals.** Within twenty days of receipt of notification of granting an appeal in cases arising under the Industrial Insurance Act, the worker or the employer, as the case may be, may file a cross appeal with the board from the order of the department from which the original appeal was taken. The contents of such cross appeal shall be in accord with the applicable portions of WAC 263-12-050.

[Statutory Authority: RCW 51.52.020. 91-13-038, § 263-12-075, filed 6/14/91, effective 7/15/91; Order 7, § 263-12-075, filed 4/4/75; Order 4, § 263-12-075, filed 6/9/72; General Order 3, Rule 5.6, filed 10/29/65; General Order 2, Rule 5.3, filed 6/12/63. Formerly WAC 296-12-075.]

**WAC 263-12-080 Correction and amendment of notice.** If any notice of appeal is found by the board to be defective or insufficient, the board may require the party filing said notice of appeal to correct, clarify or amend the same to conform to the requirements of the statute and the board's rules. The board may refuse to schedule any conference or hearing thereon until compliance with such requirement, or may issue an order providing for the denial or dismissal of such appeal upon failure to comply within a specified time.

Any party may amend his or her notice of appeal on such terms as the industrial appeals judge may prescribe, and the industrial appeals judge may, when deemed necessary, in justice to all parties, require correction, clarification or amendment of a notice of appeal before allowing any hearing thereon to proceed, or may issue an order requiring such correction, clarification or amendment to be made within a specified time, and if such requirement is not complied with, the board may dismiss the appeal.

[Statutory Authority: RCW 51.52.020. 95-02-065, § 263-12-080, filed 1/3/95, effective 2/3/95; 91-13-038, § 263-12-080, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-080, filed 12/2/82; Order 4, § 263-12-080, filed 6/9/72; General Order 3, Rule 5.7, filed 10/29/65; General Order 2, Rule 5.7, filed 6/12/63. Formerly WAC 296-12-080.]

#### **WAC 263-12-085 Weapons.**

(1) Firearms and other dangerous weapons are prohibited at all facilities owned, leased, or operated by the board of industrial insurance appeals and in the rooms where the board of industrial insurance appeals is conducting any board-related event.

(a) This prohibition applies to all parties or witnesses at hearings, all board employees, and all other persons present. It does not apply to law enforcement personnel, security personnel, or military personnel, all while engaged in official duties.

(b) As used in this chapter, "firearm and other dangerous weapons" means any device from which a projectile may be fired by an explosive; any simulated firearm operated by gas or compressed air; any electric or other conductive energy device designed to deliver an electronic charge directly or from a missile projectile, except any automatic external defibrillator; sling shot; sand club; metal knuckles; any spring-blade knife; any knife that opens or is ejected by an outward, downward thrust or movement; bow and arrow; crossbow; hunting knife (excluding pocket knives); any explosive device; any object that may reasonably be used to injure or intimidate others; dangerous chemicals, except those chemicals typically used for self-defense; and any other dangerous weapons as defined by chapter 9.41 RCW.

(c) This prohibition does not apply to board employees who have obtained a written exemption from a board member, the chief industrial appeals judge, or the chief of administrative services, which may be issued on a case-by-case basis.

(d) Possession of a valid concealed weapons permit is not a defense to the prohibition in this section.

(e) This prohibition does not apply to lawful firearms or other lawful weapons while confined to private motor vehicles in parking areas at board facilities.

(f) This prohibition does not apply to firearms or other dangerous weapons offered as evidence in a board hearing. However, any party or representative seeking to offer a firearm or dangerous weapon as evidence shall obtain written permission from the hearing judge, in advance of the hearing date, before bringing any such item to the hearing. Any application for permission to offer a firearm or other dangerous weapon shall identify the manner, method, means, and other information explaining how the firearm or weapon will be secured.

(2) Notice that firearms and other dangerous weapons are prohibited shall be posted conspicuously in the waiting area of all board offices and shall be included with every proceeding notice issued by the board.

(3) Any person in possession of a firearm or dangerous weapon at a facility owned, leased, or operated by the board or in rooms being used by the board may be excluded from the facility or room, consistent with the provisions of WAC 263-12-020 (10)(c), and may face any other applicable legal consequences.

[Statutory Authority: RCW 51.51.2020 and 51.52.020. WSR 17-24-121, § 263-12-085, filed 12/6/17, effective 1/6/18.]

**WAC 263-12-090 Conferences – Notice of conferences.** Once an appeal has been granted, it shall be assigned to an industrial appeals judge with direction to conduct a settlement conference or a conference to schedule the appeal for hearing. The industrial appeals judge may, in his or her discretion, conduct conferences in person or by telephone conference call. In-person conferences shall be scheduled upon written notice to all parties specifying the date, time and place set for such conference. Telephone conferences shall be scheduled upon written notice to all parties specifying the date and time for such conference, and that such conference shall be conducted by telephone. Notice of conferences, whether in person or by telephone, shall be mailed not less than seven days prior to the date of the conference, unless such notice is waived by all parties. The industrial appeals judge assigned to conduct hearings in an appeal or his or her designee shall conduct the conference at which hearings are scheduled.

[Statutory Authority: RCW 51.51.2020 and 51.52.020. WSR 17-24-121, § 263-12-090, filed 12/6/17, effective 1/6/18. Statutory Authority: RCW 51.52.020. 00-23-021, § 263-12-090, filed 11/7/00, effective 12/8/00; 91-13-038, § 263-12-090, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-090, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-090, filed 1/18/82; Order 7, § 263-12-090, filed 4/4/75; Order 4, § 263-12-090, filed 6/9/72; General Order 2, Rules 6.1-6.4, filed 6/12/63; General Order 1, Rules 5.3-5.4, filed 3/23/60; Subsection (6), General Order 3, Rule 6.4, filed 10/29/65. Formerly WAC 296-12-090.]

**WAC 263-12-091 Notice of disqualification.** Notice of disqualification against an industrial appeals judge in an appeal will disqualify a judge from hearing or deciding a matter, except only one notice may be filed by a party in an appeal and such notice must be filed:

(1) Within thirty days of receipt of the notice of assignment of the appeal to the industrial appeals judge or prior to the assigned industrial appeals judge holding any proceeding in the appeal, whichever occurs sooner; or

(2) Within five business days of notification that the appeal has been assigned to a new industrial appeals judge for the purpose of writing a proposed decision and order.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-091, filed 7/14/21, effective 8/14/21; 91-13-038, § 263-12-091, filed 6/14/91, effective 7/15/91.]

**WAC 263-12-092 Mediation and claim resolution structured settlement agreement conferences.**

(1) Except as otherwise required by law, subsection (3) of this section, or by expressed agreement of the parties, all mediation and claim resolution settlement agreement conferences conducted pursuant to RCW 51.52.095 or 51.04.063, including communications, statements, and disclosures made by any participant shall be confidential. Such communications, statements, and disclosures shall not be reported, placed in evidence, or disclosed to anyone not a party to the appeal. Such communications, statements, and disclosures shall not be construed as an admission or declaration against interest. No party shall be bound by anything done or said during such events unless a settlement or other agreement is reached in writing or reduced to writing by the mediator or judge.

(2) Despite any agreement of the parties to the contrary, a mediation or claim resolution settlement agreement conference judge is prohibited from disclosing any communications, statements, disclosures, or representations identified in subsection (1) of this section, and shall not be called as a witness or deponent in any later proceeding for the purpose of making such disclosures.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

(4) Mediation and claim resolution settlement agreement conferences are confidential and nonparties may be excluded from the events.

(5) Mediation and claim resolution settlement agreement conferences may not be recorded by any type of recording device.

[Statutory Authority: RCW 51.52.020. WSR 22-14-024, § 263-12-092, filed 6/24/22, effective 7/25/22; WSR 14-24-105, § 263-12-092, filed 12/2/14, effective 1/2/15; WSR 08-01-081, § 263-12-092, filed 12/17/07, effective 1/17/08.]

**WAC 263-12-093 Conferences – Disposition of appeals by agreement.**

(1) If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.

(a) In industrial insurance cases and cases involving the discrimination provisions of the Washington Industrial Safety and Health Act, if an agreement concerning final disposition of the appeal is reached by the employer and worker or beneficiary at a conference at which the department is represented, and no objection is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled.



(b) In cases involving safety and health violations of the Washington Industrial Safety and Health Act, an agreement concerning final disposition of the appeal among the parties must include regardless of other substantive provisions covered by the agreement: (i) A statement reciting the abatement date for the violations involved, and (ii) a statement confirming that the penalty assessment for contested and noncontested violations has or will be paid.

(c) Where all parties concur in the disposition of an appeal but the industrial appeals judge is not satisfied that the agreement is in conformity with the facts and the law or that the board has jurisdiction or authority to order the relief sought, the industrial appeals judge may require such evidence or documentation necessary to adequately support the agreement in fact and/or in law.

(2) All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the industrial appeals judge and the parties shall indicate their concurrence on the record. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference.

The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference.

(a) In such cases the agreement may be confirmed in writing by the parties to the agreement not in attendance at a conference, except that the written confirmation of a party to the agreement not in attendance at a conference will not be required where the industrial appeals judge is satisfied of the concurrence of the party or that the party received notice of the conference and did not appear.

(b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, a final order may be issued which encompasses the agreement.

(3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of safety and health appeals under the Washington Industrial Safety and Health Act, a copy of the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for 10 days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 263-12-059. If an objection to the agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled.

(4) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the board for any fee charged for their failure to attend.

[Statutory Authority: RCW 51.52.020. SR 22-19-009, § 263-12-093, filed 9/9/22, effective 10/10/22; WSR 18-24-123, § 263-12-093, filed 12/5/18, effective 1/5/19; WSR 06-12-003, § 263-12-093, filed 5/25/06, effective 6/25/06; WSR 03-02-038, § 263-12-093, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-093, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-093, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-093, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-093, filed 1/18/82; Order 7, § 263-12-093, filed 4/4/75.]

#### **WAC 263-12-095 Conference procedures.**

(1) **Scheduling information.** If no agreement is reached by the parties as to the final disposition of an appeal, the industrial appeals judge presiding at a settlement conference may direct that the appeal be assigned to an industrial appeals judge for the purpose of scheduling and conducting a hearing in the appeal. Any industrial appeals judge assigned to conduct proceedings in an appeal, or his or her designee may elicit from the parties such information as is necessary and helpful to the orderly scheduling of hearing proceedings and as may aid in expediting the final disposition of the appeal.

(2) **Prehearing matters.** At any proceeding a stipulation of facts may be obtained to show the board's jurisdiction in the matter. In addition, agreement as to the issues of law and fact presented and the simplification or limitation thereof may be obtained. The industrial appeals judge may also determine: (a) The necessity of amendments to the notice of appeal or other pleadings; (b) the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; (c) the admissibility of exhibits; (d) a stipulation as to all or part of the facts in the case; (e) obtain information as to the number of expert and lay witnesses expected to be called by the parties and their names when possible, the place or places where hearings will be required, the approximate time necessary for the presentation of the evidence of the respective parties, and all other information which may aid in the prompt disposition of the appeal; (f) the limitation of the number of witnesses; (g) the need for interpretive services; (h) exchange of medical and vocational reports and other relevant documents; (i) receive and rule on motions pertaining to prehearing discovery. These include motions by a party for a vocational evaluation of a claimant which may be granted upon a showing of surprise which ordinary prudence could not have guarded against or upon an equivalent showing of circumstances constituting good cause and upon notice to all parties of the time, place, manner, conditions, and scope of the evaluation and the person or persons by whom it is to be made, provided that the industrial appeals judge shall impose all conditions necessary to avoid delay and prejudice in the timely completion of the appeal.

(3) **Record of results of conferences.** The results of any conferences shall be stated on the record. The record may be a transcript of the proceeding, a judge's report of proceedings, and/or written interlocutory order. The record shall include, where applicable, agreements concerning issues, admissions, stipulations, witnesses, time and location of hearings, the issues remaining to be determined, and other matters that may expedite the hearing proceedings. The statement of agreement and

issues, and rulings of the industrial appeals judge, shall control the subsequent course of the proceedings, subject to modification by the industrial appeals judge or by interlocutory review pursuant to WAC 263-12-115(6).

(4) **Failure to supply information.** If any party fails to supply the information reasonably necessary to schedule the hearing in a case, the board or the industrial appeals judge may suspend setting a hearing pending receipt of the required information, impose conditions upon the presentation of evidence by the defaulting party as may be deemed appropriate, or take other appropriate action as authorized by these rules and the law.

(5) **Admissibility of matters disclosed at conference.** If no agreement of the parties is reached resolving all issues presented, no offers of settlement, admissions, or statements made by any party shall be admissible at any subsequent proceeding unless they are independently admissible therein.

[Statutory Authority: RCW 51.52.020. WSR 16-24-054, § 263-12-095, filed 12/2/16, effective 1/2/17; 00-23-021, § 263-12-095, filed 11/7/00, effective 12/8/00; 91-13-038, § 263-12-095, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-095, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-095, filed 1/18/82; Order 7, § 263-12-095, filed 4/4/75; Order 4, § 263-12-095, filed 6/9/72; Rules 6.5-6.9 filed 6/12/63; Rule 5.6, filed 3/23/60; Subsection 5, General Order 3, Rule 7.1, filed 10/29/65. Formerly WAC 296-12-100.]

#### **WAC 263-12-097 Interpreters.**

(1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in a hearing before the board of industrial insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

(2) The provisions of General Rule 11.3 regarding telephonic interpretation and General Rule 11.4 regarding team interpretation shall not apply to the board's use of interpreters.

(3) The industrial appeals judge shall make a preliminary determination that an interpreter is able to accurately interpret all communication to and from the impaired or non-English-speaking person and that the interpreter is impartial. The interpreter's ability to accurately interpret all communications shall be based upon either (a) certification by the office of the administrator of the courts, or (b) the interpreter's education, certifications, experience, and the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding. The parties or their representatives may question the interpreter as to his or her qualifications or impartiality.

(4) The board of industrial insurance appeals will pay interpreter fees and expenses when the industrial appeals judge has determined the need for interpretive services as set forth in subsection (1). When a party or person for which interpretive services were requested fails to appear at the proceeding, the requesting party or the party's representative may be required to bear the expense of providing the interpreter.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-097, filed 7/14/21, effective 8/14/21; 06-12-003, § 263-12-097, filed 5/25/06, effective 6/25/06; 00-23-022, § 263-12-097, filed 11/7/00, effective 12/8/00.]

#### **WAC 263-12-100 Hearings—Notice of hearing.**

(1) **Time.** In those cases that proceed to hearing, the board shall mail notice of scheduled hearings to all parties at their last known address as shown by the records of the board or department of labor and industries not less than fifteen days prior to the hearing date: Hearings may be held on less than fifteen days' notice upon agreement of all parties that have made an appearance in the appeal.

(2) **Contents.** The notice shall identify the appeal to be heard, the names of the parties to the appeal and their representatives, if any, and shall specify the time and place of hearing.

[Statutory Authority: RCW 51.52.020. 00-23-021, § 263-12-100, filed 11/7/00, effective 12/8/00; 82-03-031 (Order 11), § 263-12-100, filed 1/18/82; Order 4, § 263-12-100, filed 6/9/72; General Order 1, Rule 5.2, filed 3/23/60; Subsection 2, General Order 3, Rule 7.1, filed 10/29/65. Formerly WAC 296-12-100.]

**WAC 263-12-106 Expedited hearings.** If a statute requires that the board conduct an expedited hearing in a matter, the matter will be referred to a duly authorized industrial appeals judge. Notices of conferences and hearings related to the expedited hearing will conform to the requirements identified in WAC 263-12-090 and 263-12-100. After hearing all testimony and receiving all evidence related to the expedited hearing, the industrial appeals judge will refer the matter directly to the board for decision. The board will issue an order based on the record of the expedited hearing.

[Statutory Authority: RCW 51.52.020. 04-16-009, § 263-12-106, filed 7/22/04, effective 8/22/04.]

#### **WAC 263-12-115 Procedures at hearings.**

(1) **Industrial appeals judge.** All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

##### **(2) Order of presentation of evidence.**

(a) In any appeal under either the Industrial Insurance Act, the Worker and Community Right to Know Act or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief except that in an appeal from an order of the department that alleges fraud or willful misrepresentation the department or self-insured employer shall initially introduce all evidence in its case-in-chief.

(b) In all appeals subject to the provisions of the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

(c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order. Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(3) **Objections and motions to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon. Extended argument or debate shall not be permitted.

(4) **Rulings.** The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) **Interlocutory appeals to the board - Confidentiality of trade secrets.** A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) **Interlocutory review by a chief industrial appeals judge.**

(a) Except as provided in subsection (5) of this section interlocutory rulings of the industrial appeals judge are not subject to direct review by the board. A party to an appeal or a witness who has made a motion to quash a subpoena to appear at board related proceedings, may within five working days of receiving an adverse ruling from an industrial appeals judge request a review by a chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support of the request and setting forth the grounds for the request, including the reasons for the necessity of an immediate review during the course of conference or hearing proceedings. Within ten working days of receipt of the written request, the chief industrial appeals judge, or designee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.

(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.

(c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings; nor shall any scheduled proceedings be canceled pending a response to the request.

(7) **Recessed hearings.** Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "notice of hearing" shall be required as to any recessed hearing.

(8) **Failure to present evidence when due.**

(a) If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to appear and present such evidence, the industrial appeals judge may conclude the hearing and issue a proposed decision and order on the record, or recess or set over the proceedings for further hearing for the receipt of such evidence.

(b) In cases concerning Washington Industrial Safety and Health Act citations, a failure to appear by the person and/or party who filed the appeal is deemed to be an admission of the validity of any citation, abatement period, or penalty issued or proposed, and constitutes a waiver of all rights except the right to receive a copy of the decision.

(c) In cases concerning willful misrepresentation, the industrial appeals judge may proceed with the hearing, receive evidence, and issue a proposed decision and order without requirement of further notice to the appealing party who fails to appear.

(9) **Offers of proof in colloquy.** When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

(10) **Telephone and video testimony.** At hearings, the parties may present the testimony of witnesses by telephone or video if agreed to by all parties and approved by the industrial appeals judge. For good cause the industrial appeals judge may authorize telephone or video testimony over the objection of a party after weighing the following nonexclusive factors:

- The need to weigh a witness's demeanor or credibility.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the hearing.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Feasibility of taking a perpetuation deposition.
- Availability of quality telecommunications equipment and service.

When telephone or telephone testimony is permitted, the industrial appeals judge presiding at the hearing will swear in the witness testifying by telephone or video as if the witness appeared live at the hearing. For rules relating to telephone or video deposition testimony, see WAC 263-12-117.

[Statutory Authority: RCW 51.51.2020. WSR 22-14-024, § 263-12-115, filed 6/24/22, effective 7/25/22; WSR 17-24-121, § 263-12-115, filed 12/6/17, effective 1/6/18. Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-115, filed 12/2/14, effective 1/2/15; WSR 08-01-081, § 263-12-115, filed 12/17/07, effective 1/17/08; WSR 03-02-038, § 263-12-115, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-115, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-115, filed 6/14/91, effective 7/15/91; WSR 84-08-036 (Order 17), § 263-12-115, filed 3/30/84. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-115, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-115, filed 1/18/82; Order 9, § 263-12-115, filed 8/8/75; Order 7, § 263-12-115, filed 4/4/75; Order 4, § 263-12-115, filed 6/9/72; General Order 3, Rule 7.5, filed 10/29/65; General Order 2, Rule 7.4, filed 6/12/63; General Order 1, Rule 5.10, filed 3/23/60. Formerly WAC 296-12-115.]

#### **WAC 263-12-116 Exhibits.**

(1) Tangible exhibits shall be submitted on paper 8 1/2" x 11" in size. A larger version may be shown to the judge or witness for purpose of demonstration and a smaller version marked and offered as the exhibit.

(2) Electronic exhibits containing documents, pictures, audio, video, or other electronic material may be submitted on

a CD, DVD, flash drive, or similar device, subject to the following conditions:

(a) The party seeking to present the audio/video/electronic material at a hearing must provide the appropriate equipment for hearing/viewing the material.

(b) If the party submitting the material for presentation at a hearing does not provide the equipment needed, the material will not be heard or viewed during the hearing, but the exhibit may be marked into evidence and ruling reserved.

(c) A media exhibit must be in MP4 (MPEG-4 Part 14) format or other industry format specified on the BIIA web site.

(d) Documents and pictures must be submitted in a pdf format.

(3) The board will not accept any hazardous exhibit. A hazardous exhibit is an exhibit that:

(a) Threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics.

(b) Threatens the security of the board's electronic equipment or network. Nonexclusive examples of hazardous exhibits include:

- Biohazards (bodily fluid samples, bloody clothing).
- Used medical implements or devices (surgical screws, cables, plates, pins, prosthetic devices).
- Corrosive or toxic substances.
- Controlled substances (prescription drugs).
- Potential airborne contaminants (asbestos, silica).
- Flammable, explosive, or reactive materials.
- Live ammunition, firearms, knives, and other weapons.

(4) Photographs, videotapes, or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristics of hazardous evidence consistent with this rule.

(5) If a party is uncertain whether a proposed exhibit conforms to this rule or is not able to bring the necessary equipment to the hearing, that party must request a conference with the judge at least fourteen days before submitting the exhibit, asking the judge to make a determination of conformity or to provide assistance in making the exhibit accessible at the proceeding.

(6) If an exhibit submitted in an appeal under the Washington Industrial Safety and Health Act (chapter 49.17 RCW) implicates a trade secret as set forth in chapter 19.108 RCW, the employer must bring it to the attention of an industrial appeals judge at the time of submission or within a reasonable time thereafter to permit a ruling on the confidentiality of the information and application of RCW 49.17.200 and WAC 263-12-115(5).

[Statutory Authority: RCW 51.51.2020 and 51.52.020. WSR 17-24-121, § 263-12-116, filed 12/6/17, effective 1/6/18. Statutory Authority: RCW 51.52.020. WSR 16-24-054, § 263-12-116, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-116, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-116, filed 6/30/10, effective 7/31/10.]

#### **WAC 263-12-117 Perpetuation depositions.**

(1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to:

- (a) The complexity of the issues raised by the appeal;
- (b) The desirability of having the witness's testimony presented at a hearing;
- (c) The costs incurred by the parties in complying with the ruling; and
- (d) The fairness to the parties in complying with the ruling.

(2) **Telephone and video depositions:** When testimony is taken by perpetuation deposition, it may be taken by telephone or video if all parties agree. For good cause the industrial appeals judge may permit the parties to take the testimony of a witness by telephone or video deposition over the objection of a party after weighing the following nonexclusive factors:

- The need of a party to observe a witness's demeanor.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the deposition.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone or video, the court reporter transcribing the deposition is authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

(3) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives. If a party takes a deposition under this section, but elects not to file the deposition as evidence in the appeal, the party shall provide written notice to the assigned industrial appeals judge and all other parties prior to the deposition filing deadline.

(4) The party filing a deposition must submit the stenographically reported and transcribed deposition, certification, and exhibits in an electronic format in accordance with procedures established by the board. The following requirements apply to the submission of depositions:

- (a) Video depositions will not be considered as part of the record on appeal;
- (b) The electronic deposition must be submitted in searchable PDF format;
- (c) Exhibits to the deposition must be filed electronically as a single attachment separate from the deposition transcript and certification;
- (d) Any media exhibit (audio or video) must meet the requirements set forth in WAC 263-12-116; and
- (e) If the deposition is not transcribed in a reproducible format or properly submitted it may be excluded from the record.

(5) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions:

(a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived.

(b) That all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition.

(c) That the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge.

(d) That all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order.

(e) That the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

[Statutory Authority: RCW 51.51.020. WSR 22-14-024, § 263-12-117, filed 6/24/22, effective 7/25/22; WSR 21-15-042, § 263-12-117, filed 7/14/21, effective 8/14/21; WSR 17-24-121, § 263-12-117, filed 12/6/17, effective 1/6/18. Statutory Authority: RCW 51.52.020. WSR 16-24-054, § 263-12-117, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-117, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-117, filed 6/30/10, effective 7/31/10; WSR 04-16-009, § 263-12-117, filed 7/22/04, effective 8/22/04; WSR 03-02-038, § 263-12-117, filed 12/24/02, effective 1/24/03.]

### **WAC 263-12-118 Motions.**

(1) **Definition.** A party's written or oral request for the board to take action on a pending appeal is a "motion." Motions must be in writing unless made during a hearing before an industrial appeals judge. The board recognizes that there are two basic categories of motions:

(a) **Nondispositive motions.** Nondispositive motions include procedural motions, such as motions for a continuance, an extension of time, or to reopen the record; and discovery motions, such as motions in limine or motions to compel or request sanctions.

(b) **Dispositive motions.** Dispositive motions ask for a decision on one or more of the issues in an appeal or to dismiss the appeal. Examples of dispositive motions are motions to dismiss or motions for summary judgment. See WAC 263-12-11801.

(2) **Motions made to the chief legal officer.** The procedural rules in subsections (3) through (6) of this section do not apply to motions made to the chief legal officer for consideration by the three-member board:

(a) Motions for stay of the order on appeal under RCW 51.52.050 (2)(b). (See WAC 263-12-11802.)

(b) Motions to reconsider or vacate final board orders. (See WAC 263-12-156.)

(c) Motions to set reasonable attorneys' fees under RCW 51.52.120. (See WAC 263-12-165.)

(d) Requests for a stay of abatement pending appeal under RCW 49.17.140 (4)(a) in appeals filed under the Washington Industrial Safety and Health Act. (See WAC 263-12-059.)

(3) **Written motions.** A written motion must identify the action requested on the first page in bold print. See WAC 263-12-01501 for other information about communication and filing.

(4) **Oral motions.** Any party may bring an oral motion during a hearing, unless prohibited from doing so at the industrial appeals judge's discretion. The industrial appeals judge may provide an opportunity for other parties to respond to any oral motion. The industrial appeals judge may require that an oral motion also be submitted in writing and may provide an opportunity for written response.

(5) **Responses to nondispositive motions.** Any party who opposes a written nondispositive motion may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the industrial appeals judge may set.

(6) **Argument.**

(a) **Nondispositive motions.** All nondispositive motions will be ruled on without oral argument, unless it is requested by the parties and approved by the industrial appeals judge, or at the discretion of the industrial appeals judge. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" prominently on the first page of the motion or responsive pleading. The time and date for oral argument shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge. Written notice shall be mailed not less than seven calendar days prior to the date set for oral argument, unless waived by the parties.

(b) **Dispositive motions.** See WAC 263-12-11801.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-118, filed 7/14/21, effective 8/14/21; WSR 16-24-054, § 263-12-118, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-118, filed 12/2/14, effective 1/2/15.]

### **WAC 263-12-11801 Motions that are dispositive—Motion to dismiss; motion for summary judgment; voluntary dismissal.**

(1) **Motion to dismiss.**

(a) **General.** A party may move to dismiss another party's appeal on the asserted basis that the notice of appeal fails to state a claim on which the board may grant relief. The board will consider the standards applicable to a motion made under CR 12(b)(6) of the Washington superior court's civil rules. Examples of other grounds for a motion to dismiss include, but are not limited to, a lack of jurisdiction, failure to present evidence when due, and failure to present a prima facie case.

(b) **Time for filing motion to dismiss.** A motion to dismiss for lack of jurisdiction should be filed as early as possible to avoid unnecessary litigation. In all cases other than appeals under the Washington Industrial Safety and Health Act, a motion to dismiss for failure to present evidence when due may be made if the appealing party fails to appear at an evidentiary hearing held pursuant to due and proper notice. A motion to dismiss for failure to present a prima facie case may be made at any time prior to closure of the record.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as may be set by the industrial appeals judge. The industrial appeals judge may allow oral argument.

(2) **Motion for summary judgment.**

(a) **General.** A party may move for summary judgment of one or more issues in the appeal if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits or declarations conforming to the requirements of RCW 9A.72.085, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the industrial appeals judge will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Oral argument.** All summary judgment motions will be decided after oral argument, unless waived by the parties. The assigned industrial appeals judge will determine the length of oral argument allowed. Summary judgment motions must be heard more than fourteen calendar days before the hearing on the merits unless leave is granted by the industrial appeals judge. The time and date for hearing shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge.

(c) **Dates for filing.** The deadlines to file and serve a motion for summary judgment and opposing and reply documents shall be as set forth in CR 56 unless the industrial appeals judge establishes different deadlines in the litigation order.

(3) **Motion for voluntary dismissal - General.** The party who filed the appeal may move to have the appeal voluntarily dismissed in accordance with CR 41(a) at any time.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-11801, filed 12/2/14, effective 1/2/15.]

**WAC 263-12-11802 Employer's motion for a stay of the order on appeal.**

(1) **General.** Any employer may move for a stay of the department order on appeal, in whole or in part, as provided in RCW 51.52.050 (2)(b). The board will grant the motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal.

(2) **Time for filing.** As set forth in RCW 51.52.050 (2)(b), a motion filed by the employer for a stay of benefits pursuant to RCW 51.52.050 must be filed within fifteen days of the board order granting the appeal.

(3) **Motion must be filed separately.** An employer must file a motion for a stay of the order on appeal separately from any pleading or other communication with the board and must note "MOTION FOR STAY OF BENEFITS" prominently on the first page of the motion.

(4) **Expedited review.** The board will conduct an expedited review of the department claim file as it existed on the date of the department order on appeal. The board will issue a final decision on the motion for stay of benefits within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later.

(5) **Appeal to superior court.** The board's final decision on the motion for stay of benefits may be appealed to superior court in accordance with RCW 51.52.110.

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-11802, filed 12/2/14, effective 1/2/15.]

**WAC 263-12-120 Additional evidence by industrial appeals judge.** The industrial appeals judge may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably, and in the exercise of this power, a physical, mental or vocational examination or evaluation of a worker by one or more medical or vocational experts may be ordered to be conducted at the board's expense. Any such evidence secured and presented by the industrial appeals judge shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the industrial appeals judge, the party shall make application immediately following the conclusion of such evidence.

[Statutory Authority: RCW 51.52.020. 00-23-021, § 263-12-120, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-120, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-120, filed 1/18/82; Order 4, § 263-12-120, filed 6/9/72; General Order 3, Rule 7.6, filed 10/29/65; General Order 2, Rule 7.5, filed 6/12/63. Formerly WAC 296-12-120.]

**WAC 263-12-125 Applicability of court rules.** Insofar as applicable, and not in conflict with these rules, the statutes and rules regarding procedures in civil cases in the superior courts of this state shall be followed.

[Statutory Authority: RCW 51.52.020. 91-13-038, § 263-12-125, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. 86-03-021 (Order 20), § 263-12-125, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-125, filed 12/2/82. Statutory Authority: RCW 51.52.020. 82-03-031 (Order 11), § 263-12-125, filed 1/18/82; Order 4, § 263-12-125, filed 6/9/72.]

**WAC 263-12-135 Record.** The record in any contested case shall consist of the order of the department, the notice of appeal therefrom, all orders issued by the board (including litigation orders and judge's report of proceeding), responsive pleadings, if any, and notices of appearances, and any other written applications, motions, stipulations or requests duly filed by any party. Such record shall also include all depositions, the transcript of testimony and other proceedings at the hearing, together with all exhibits offered. No part of the department's record or other documents shall be made part of the record of the board unless offered in evidence.

The record in any appeal disposed of by order denying appeal or order granting relief on the record as provided in RCW 51.52.080, shall include those documents found in the department record that are relevant to the board's disposition.

[Statutory Authority: RCW 51.52.020. 08-01-081, § 263-12-135, filed 12/17/07, effective 1/17/08; 00-23-021, § 263-12-135, filed 11/7/00, effective 12/8/00; Order 4, § 263-12-135, filed 6/9/72; Rule 8.2, filed 6/12/63; Rule 6.2, filed 3/23/60, amended by General Order 3, Rule 8.2, filed 10/29/65. Formerly WAC 296-12-135.]

**WAC 263-12-140 Proposed decisions and orders.** Upon completion of the record an industrial appeals judge shall enter a proposed decision and order which shall be in writing and contain findings of fact and conclusions of law as to each contested issue of fact and law, as well as the order based thereon. Copies of the proposed decision and order shall be mailed to each party to the appeal and to his or her attorney or representative of record.

[Statutory Authority: RCW 51.52.020. 00-23-021, § 263-12-140, filed 11/7/00, effective 12/8/00; 95-02-065, § 263-12-140, filed 1/3/95, effective 2/3/95. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-140, filed 12/2/82; Order 4, § 263-12-140, filed 6/9/72; Rule 8.3, filed 6/12/63. Formerly WAC 296-12-140.]

**WAC 263-12-145 Petition for review.**

(1) **Time for filing.** Within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record, any aggrieved party may file with the board a written petition for review. When a petition for review is filed, the failure of any party not aggrieved by the proposed decision and order to file a petition for review shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) **A petition for review must be filed separately.** A petition for review must be filed separately from any other pleading or communication with the board and must note "PETITION FOR REVIEW" prominently on the first page of the submission.

(3) **Extensions of time.**

(a) The board may extend the time for filing a petition for review upon written request of a party filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record. Such extension of time, if granted, will apply to all parties to the appeal. Further extensions of time beyond any initial extension may be allowed only if an application for further extension is filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record or the board, on its own motion or at the request of a party, acts to further extend the time for filing a petition for review before the prior extended time for filing a petition for review has expired.

(b) A request for translation of a proposed decision and order by an unrepresented limited-English proficient party will be treated as a request for extension of time. When the board receives and mails the translated proposed decision and order, the board will also extend the time for filing a petition for review for all parties for an additional thirty days.

(4) **Contents.** A petition for review shall set forth in detail the grounds for review. A party filing a petition for review waives all objections or irregularities not specifically set forth therein. A general objection to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the objection shall refer to the evidence relied upon in support thereof. A general objection to all evidentiary rulings adverse to the party shall be considered adequate compliance with this rule. If legal issues are involved, the petition for review shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The board shall, at the request of any party, provide a copy of the transcript of testimony and other proceedings at the hearing. The requesting party shall sign an acknowledgment that receipt of the transcript of proceedings shall constitute compliance by the board with any statute requiring service on the party of a certified copy of the testimony.

(5) **Action by board on petition for review.** (a) After receipt of a petition for review, the board shall enter an order within twenty days either: (i) Denying the petition for review, in which case the proposed decision and order shall become the final order of the board, or (ii) granting the petition for review, in which case the board shall within one hundred and eighty days from the date the petition for review was filed issue a final decision and order based upon its review of the record. (b) After twenty days of receipt. If a petition for review is not acted upon by the board it shall be deemed to have been granted. (c) Remands for further hearing.

After review of the record, the board may set aside the proposed decision and order and remand the appeal to the hearing process, with instructions to the industrial appeals judge to whom the appeal is assigned on remand, to dispose of the matter in any manner consistent with chapter 263-12 WAC.

(6) **Reply to petition for review.** Any party may, within ten days of receipt of the board's order granting review, submit a reply to the petition for review, a written brief, or a statement of position regarding the matters to which objections were made, or the board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters to which objections were made, within such time and on such terms as may be prescribed.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-145, filed 12/5/18, effective 1/5/19; WSR 16-24-054, § 263-12-145, filed 12/2/16, effective 1/2/17; WSR 00-23-021, § 263-12-145, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-145, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-145, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-145, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-145, filed 1/18/82; Order 9, § 263-12-145, filed 8/8/75; Order 7, § 263-12-145, filed 4/4/75; Order 4, § 263-12-145, filed 6/9/72; General Order 3, Rule 8.4, filed 10/29/65; General Order 2, Rule 8.4, filed 6/12/63. Formerly WAC 296-12-145.]

**WAC 263-12-150 Finality of proposed decisions and orders.**

(1) Where no petition for review is filed. In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order

of the board, and no appeal may be taken therefrom to the courts.

(2) Proposed decision and order deemed adopted without formal action. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

(3) Order adopting proposed decision and order—delay in mailing to parties. To permit adequate time for postal delivery of petitions for review or requests for extension of time to file petitions for review which have been filed by mail pursuant to RCW 51.52.104 and WAC 263-12-01501 (b)(ii), the board will delay the mailing of its order adopting the proposed decision and order to all parties until three days after the date the petition is due. Notwithstanding the date of mailing of the order adopting the proposed decision and order, such order shall be effective immediately following the last day permitted for filing a petition for review.

(4) Setting aside final order due to delayed postal delivery. If, after entry or mailing of the order adopting proposed decision and order, a petition for review or a request for extension of time to file a petition for review is received which bears evidence of mailing within the time permitted for filing such petition or request for extension, the board will set aside the order adopting the proposed decision and order and consider the petition or request for extension as one timely filed.

[Statutory Authority: RCW 51.52.020, 03-02-038, § 263-12-150, filed 12/24/02, effective 1/24/03; 91-13-038, § 263-12-150, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW, 86-03-021 (Order 20), § 263-12-150, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020, 83-01-001 (Order 12), § 263-12-150, filed 12/2/82; Order 4, § 263-12-150, filed 6/9/72; Rule 8.5, filed 6/12/63. Formerly WAC 296-12-150.]

**WAC 263-12-155 Final decisions and orders after review.** In those cases where a petition for review is granted, the record before the board shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chairperson may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall in all cases render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his or her attorney or representative of record.

[Statutory Authority: RCW 51.52.020, 95-02-065, § 263-12-155, filed 1/3/95, effective 2/3/95; Order 9, § 263-12-155, filed 8/8/75; Order 4, § 263-12-155, filed 6/9/72; General Order 3, Rule 8.6, filed 10/29/65; General Order 2, Rule 8.6, filed 6/12/63; General Order 1, Rule 6.2, filed 3/23/60. Formerly WAC 296-12-155.]

**WAC 263-12-156 Board review of final order.** The board will consider motions to reconsider and motions to vacate final board orders. The procedure for review of final orders is as defined in CR 59 and CR 60 of the Washington court rules except that hearings on the motion will be held solely at the discretion of the board. After receipt of the motion the board will acknowledge receipt of the motion and direct the time frames for opposing parties to respond to the motion and for the moving party to reply.

[Statutory Authority: RCW 51.52.020, 03-02-038, § 263-12-156, filed 12/24/02, effective 1/24/03.]

**WAC 263-12-160 Final decisions favoring workers or beneficiaries — Retention of jurisdiction to fix interest due.**

(1) Qualifying appeals. A worker or beneficiary who prevails in his or her own appeal regarding a claim for temporary total disability or in any appeal by the employer shall be paid simple interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney's fees.

(2) Retention of jurisdiction to enter order for payment of interest. In a qualifying appeal the board will retain jurisdiction after issuance of its final order for the purpose of entering an order fixing the amount of interest to be paid by the party having the obligation to pay the amount of the award as a result of the board's final order. In the event a further appeal is taken to superior court from the final order of the board, the board will retain jurisdiction to fix interest only if directed to fix interest by order or judgment of the court or if the appeal to superior court is dismissed without a decision on the merits of the appeal.

(3) Party who may be obligated to pay award to transmit interest fixing information. In those cases where the board determines that interest may be payable pursuant to RCW 51.52.135, the department or self-insurer, as the case may be, shall notify the board in writing of the amount of any award paid subsequent to the date of the department order under appeal, the date of payment of the award, and any other information necessary for the board to calculate and fix the interest which may be due on such award. In cases involving payment of compensation for temporary total disability the department or self-insurer shall notify the board of the monthly rate or rates at which payments are made and the periods to which the rate or rates apply.

(4) Attorneys to notify board of amount of fees. The attorney or attorneys of record for a worker or beneficiary in a qualifying appeal shall upon the request of the board provide a written statement indicating the dollar amount of fees charged to the worker or beneficiary for services rendered in obtaining or securing the award in qualifying appeals under RCW 51.52.135. Such statement shall be provided by a date specified in the board's request, but in no case later than thirty days from the date of payment by the department or self-insurer of the award paid as a result of the board's final order. In the event that the attorney or attorneys of record do not provide the board with the requisite statement within the time specified, the amount of fees paid to the attorney or attorneys will be deemed to be equal to thirty percent of the award paid as a result of the board's final order.



(5) Fixing of interest and entry of order. Upon receipt of all required information, interest will be calculated by the board at twelve percent per annum from the date of the department order granting the award in an appeal by the employer or the date of the department order denying payment of the award in a qualifying appeal by a worker or beneficiary. Thereafter, the board will enter an order fixing the amount of interest to be paid by the party having the obligation to pay the award as a result of the board's final order. Such interest shall be paid in full to the worker or beneficiary and is not subject to any claim for attorney's fees.

[Statutory Authority: RCW 51.52.020, 91-13-038, § 263-12-160, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.020 and 51.52.135, 84-02-024 (Order 15), § 263-12-160, filed 12/29/83.]

#### **WAC 263-12-165 Attorney's fees.**

(1) **Applications for attorney's fees.** (a) For the fixing of attorney fees as provided by RCW 51.52.120, the board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services rendered before the board, or before the department in a claim resolution settlement agreement, if written application therefor is made by the attorney, worker, crime victim or beneficiary, within one year after the board's final decision and order, or approval of the claim resolution settlement agreement, is communicated to the party making the application. If such application for fixing of a fee is made by the attorney, it shall set forth therein the monetary amount which the attorney considers reasonable for all services rendered before the board in an appeal, or before the department in a claim resolution settlement agreement, and the justification supporting the requested fee. The board shall afford to all parties affected a minimum of 10 days in which to submit comments and material information which may be helpful to the board in setting a fair and reasonable fee.

(b) For the ordered payment of attorney fees as provided by RCW 51.32.185 and 51.32.187, the board shall set the attorney fee in a manner consistent with applicable provisions of subsections (2) and (3) of this section.

(2) **Fee fixing criteria.** All attorney fees fixed by the board, where application therefor has been made, shall be established in accordance with Rule 1.5 of the Rules of Professional Conduct and the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal or claim resolution settlement agreement regardless of the number of attorneys representing the worker, crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

(b) The board shall defer fixing a fee until such time as information, which it deems sufficient upon which to base a fee, is available.

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary, sustaining the worker's or beneficiary's right to benefits upon an appeal by another party, or in securing a claim resolution settlement agreement.

(d) Where increased compensation is obtained, the fee may be fixed without regard to any medical benefits secured.

(e) In setting all fees, the following factors shall be carefully considered and weighed:

(i) Nature of the appeal or the claim resolution settlement agreement.

(ii) Novelty and complexity of the issues presented or other unusual circumstances.

(iii) Time and labor expended.

(iv) Skill and diligence in conducting the case or in securing the claim resolution settlement agreement.

(v) Extent and nature of the relief. In computing the extent of additional benefits, or the retention of benefits awarded by the department, the cost to the worker, crime victim or beneficiary of the litigation, i.e., medical examination and witness fees, shall be first deducted and the net benefits considered.

(vi) The amount of accrued time-loss payments as a result of proceedings before the board.

(vii) The prevalent practice of charging contingency fees in cases before the board.

(viii) The worker's or crime victim's circumstances and the remedial social purposes of the Industrial Insurance Act and of the Crime Victims Compensation Act, which are intended to provide sure and adequate relief to injured workers and crime victims and their families.

(f) In those cases where the payment of accumulated benefits is insufficient to allow payment of the fee set and allow the worker, crime victim or beneficiary to retain a reasonable monetary amount, the board may also set the schedule and manner in which such fee shall be payable.

#### **(3) Amount of fees.**

(a) Where additional compensation for permanent partial disability, loss of earning power, or total temporary disability is obtained as a result of settlement of the appeal on agreement of the parties prior to presentation of testimony, a fee of from 10 to 25 percent of the increased compensation due the worker, crime victim or beneficiary on the date of the board's order on agreement of the parties and by reason thereof shall be fixed after considering all factors.

(b) Where additional compensation for permanent partial disability, loss of earning power or total temporary disability is obtained after the presentation of testimony, a fee of from 10 to 30 percent of the increased compensation shall be fixed after considering all factors. This provision shall also apply to retroactive permanent total disability (pension) benefits.

(c) Where no additional compensation is obtained, but the worker or crime victim is relieved of the payment for medical benefits, a fee of from 10 to 25 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for the worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve as calculated by the department of labor and industries, and 15 percent of the pension reserve in excess of \$40,000.00 shall constitute the usual fee, which may be decreased or increased after weighing all factors.

(e) Where indeterminate additional compensation is obtained because the claimant is successful in establishing a proper claim for benefits which was previously rejected or for which responsibility was denied, a fee in accordance with the preceding principles and factors shall be fixed.

(f) Where, upon an appeal by a party other than the worker or his or her beneficiary, the right to receive the benefits awarded by the department is affirmed, a fee in accordance with the preceding principles and factors shall be fixed.

(g) Where a claim resolution settlement agreement is approved by the board, fees for attorney's services are limited to 15 percent of the total amount to be paid to the worker after the agreement becomes final.

(h) When a firefighter, law enforcement officer, or Hanford site worker has prevailed and the final decision is to allow the claim, making the opposing party responsible for the payment of reasonable costs, including attorney fees, the fees may be established based on an hourly rate.

(i) The number of hours expended must be supported by documentation. The board will disregard inflated hours or hours reflecting reimbursement for clerical functions.

(ii) All requests for costs must be accompanied by invoices and documentation including hourly breakdowns where applicable.

(4) **Excess fee unlawful.** Where the board, pursuant to written application by an attorney, worker, crime victim or beneficiary, fixes a reasonable fee for the services of the attorney in proceedings before this board, or before the department in securing a claim resolution settlement agreement, it is unlawful for the attorney to charge or receive any fee for such services in excess of that fee so fixed, per RCW 51.52.132.

[Statutory Authority: RCW 51.52.020. WSR 22-14-024, § 263-12-165, filed 6/24/22, effective 7/25/22; WSR 18-24-123, § 263-12-165, filed 12/5/18, effective 1/5/19; WSR 11-23-154, § 263-12-165, filed 11/22/11, effective 12/23/11; WSR 08-01-081, § 263-12-165, filed 12/17/07, effective 1/17/08; WSR 95-12-062, § 263-12-165, filed 6/5/95, effective 7/6/95; WSR 91-13-038, § 263-12-165, filed 6/14/91, effective 7/15/91; WSR 82-03-031 (Order 11), § 263-12-165, filed 1/18/82; Order 7, § 263-12-165, filed 4/4/75; Order 4, § 263-12-165, filed 6/9/72; Subsection 1 from General Order 3, Rule 9.1, filed 10/29/65; General Order 2, Rule 9.2, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60; Subsection (2), General Order 3, Rule 9.2, filed 10/29/65; General Order 9.1, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60. Formerly WAC 296-12-165.]

**WAC 263-12-170 Appeals to superior court – Certification of record.** Upon receipt of a copy of notice of appeal to superior court from a board order, served upon the board by the appealing party pursuant to RCW 51.52.110, 7.68.110, 51.48.131, 34.05.542 or 49.17.150, the chief legal officer or his or her designee shall certify the record made before the board to the court pursuant to the provisions of RCW 51.52.110, 7.68.110, 51.48.131, 34.05.566 or 49.17.150. Copies of such record (except nonreproducible exhibits) shall be furnished to all parties to the proceedings before the board.

[Statutory Authority: RCW 51.52.020. WSR 21-15-042, § 263-12-170, filed 7/14/21, effective 8/14/21; 91-13-038, § 263-12-170, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. 86-03-021 (Order 20), § 263-12-170, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. 83-01-001 (Order 12), § 263-12-170, filed 12/2/82; Order 7, § 263-12-170, filed 4/4/75; Order 4, § 263-12-170, filed 6/9/72; General Order 2, Rules 10.1 and 10.2, filed 6/12/63; General Order 1, Rules 7.1 and 7.2, filed 3/23/60; Subsections (1) and (2), General Order 3, Rule 10.2, filed 10/29/65. Formerly WAC 296-12-170.]

**WAC 263-12-171 Appeals to superior court – Service of final court order or judgment on the board.** In all cases in which a party has appealed to the superior court from a decision of the board, or from superior court to any appellate court, the prevailing party in such appeal shall promptly forward to the board a conformed copy of the final order, judgment or decision of the court.

[Statutory Authority: RCW 51.52.020. 91-13-038, § 263-12-171, filed 6/14/91, effective 7/15/91.]

**WAC 263-12-175 Computation of time.** The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal state holiday, and then it is also excluded.

[Statutory Authority: RCW 51.52.020. 98-20-109, § 263-12-175, filed 10/7/98, effective 11/7/98; 82-03-031 (Order 11), § 263-12-175, filed 1/18/82; Order 4, § 263-12-175, filed 6/9/72; General Order 2, Rule 11, filed 6/12/63. Formerly WAC 296-12-175.]

**WAC 263-12-180 Petitions for declaratory ruling.**

(1) **Right to petition for declaratory ruling.** As prescribed by RCW 34.05.240, any interested party may petition the board for a declaratory ruling with regard to the board's policies, procedures, and rules.

(2) **Form of petition.** The form of the petition for a declaratory ruling shall generally adhere to the following:

(a) On the first page shall appear the wording "In the matter of the petition of (name of petitioning party) for a declaratory ruling."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the relief sought by the petitioner. The petition shall be signed by the petitioner or its representative and contain a statement that the person signing the petition has read it and that to the best of his or her knowledge or information and belief the contents thereof are true.

(3) **Consideration of petition.** The entire board shall consider the petition, and within a reasonable time shall:

(a) Issue a nonbinding declaratory ruling; or

(b) Notify the petitioner that no declaratory ruling is to be issued; or

(c) Set a reasonable time and place for a hearing or for submission of written evidence on the matter, and give reasonable notification to the petitioner of the time and place for such hearing or submission, and of the issues involved.

(4) **Disposition of petition.** If a hearing is held or evidence is submitted, the board shall, within a reasonable time:

(a) Issue a binding declaratory ruling; or

- (b) Issue a nonbinding declaratory ruling; or
- (c) Notify the petitioner that no declaratory ruling is to be issued.

[Statutory Authority: RCW 51.52.020, 98-20-109, § 263-12-180, filed 10/7/98, effective 11/7/98. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. 86-03-021 (Order 20), § 263-12-180, filed 1/10/86; Order 4, § 263-12-180, filed 6/9/72; General Order 2, Rules 12.1-12.4, filed 6/12/63; Subsection (3), General Order 3, Rule 12.3, filed 10/29/65. Formerly WAC 296-12-180.]

#### **WAC 263-12-190 Petitions for rule making.**

- (1) Right to petition for rule making. Any interested person may petition the board for the promulgation, amendment, or repeal of any rule.
- (2) Form of petition. The form of the petition for promulgation, amendment, or repeal of any rule shall generally adhere to the following:

At the top of the page shall appear the wording, "Before the board of Industrial Insurance Appeals, State of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his or her attorney. The original and two legible copies of the petition shall be filed with the board. Petitions shall be on white paper, 8 1/2" x 11" in size.

- (3) Consideration of petitions. All petitions shall be considered by the entire board, and the board may, in its discretion, order an informal hearing or meeting for the further consideration and discussion of the requested promulgation, amendment or repeal of any rule.

- (4) Notification of disposition of petition. The board shall notify the petitioning person within a reasonable time of the disposition, if any, of the petition.

[Statutory Authority: RCW 51.52.020, 95-02-065, § 263-12-190, filed 1/3/95, effective 2/3/95. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. 86-03-021 (Order 20), § 263-12-190, filed 1/10/86; Order 4, § 263-12-190, filed 6/9/72; General Order 2, Rules 13.1-13.4, filed 3/23/60; Subsections (3)-(4), General Order 3, Rule 13.3, filed 10/29/65. Formerly WAC 296-12-190.]

#### **WAC 263-12-195 Significant decisions.**

- (1) The board's publication "*Significant Decisions*," prepared pursuant to RCW 51.52.160, contains the decisions or orders of the board which it considers to have an analysis or decision of substantial importance to the board in carrying out its duties. Together with the indices of decision maintained pursuant to WAC 263-12-016(4), "*Significant Decisions*" shall serve as the index required by RCW 42.56.070 (5)(a) and (b).

(2) The board selects the decisions or orders to be included in "*Significant Decisions*" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the board. Nominations of decisions or orders for inclusion in "*Significant Decisions*" should be submitted in writing to the chief legal officer.

(3) "*Significant Decisions*" consists of decisions and orders identified as significant and headnotes summarizing the proposition or propositions for which the board considers the decisions or orders "significant." Indices are also provided to identify each decision or order by name and by subject.

- (4) "*Significant Decisions*" and indices may be accessed at the board's web site, [www.biia.wa.gov](http://www.biia.wa.gov).

[Statutory Authority: RCW 51.52.020, WSR 21-15-042, § 263-12-195, filed 7/14/21, effective 8/14/21; WSR 18-24-123, § 263-12-195, filed 12/5/18, effective 1/5/19; WSR 17-24-121, § 263-12-195, filed 12/6/17, effective 1/6/18; WSR 91-13-038, § 263-12-195, filed 6/14/91, effective 7/15/91.]

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**RCW 51.52.010 Board of industrial insurance appeals.** There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician or licensed advanced registered nurse practitioner, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or licensed advanced registered nurse practitioner or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their

entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [2004 c 65 § 15; 2003 c 224 § 1; 1999 c 149 § 1; 1981 c 338 § 10; 1977 ex.s. c 350 § 74; 1975-'76 2nd ex.s. c 34 § 151; 1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

**Report to legislature—Effective date—Severability—2004 c 65:** See notes following RCW 51.04.030.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**Effective dates—Severability—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

**RCW 51.52.020 Board — Rule-making power.** The board may make rules and regulations concerning its functions and procedure, which shall have the force and effect of law until altered, repealed, or set aside by the board: PROVIDED, That the board may not delegate to any other person its duties of interpreting the testimony and making the final decision and order on appeal cases. All rules and regulations adopted by the board shall be printed and copies thereof shall be readily available to the public. [1961 c 23 § 51.52.020. Prior: 1951 c 225 § 2; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

**RCW 51.52.030 Board — Expenses.** The board may incur such expenses as are reasonably necessary to carry out its duties hereunder, which expenses shall be paid, one-half from the accident fund and one-half from the medical aid fund upon vouchers approved by the board. [1961 c 23 § 51.52.030. Prior: 1951 c 225 § 3; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

**RCW 51.52.040 Board — Removal of member.** Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit the original of such written charges to the chief justice of the supreme court and a copy thereof to the member accused. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review. [1961 c 23 § 51.52.040. Prior: 1951 c 225 § 4; prior: 1949 c 219 § 4; Rem. Supp. 1949 § 10837-3.]

**RCW 51.52.050 Service of departmental action — Demand for repayment — Orders amending benefits — Reconsideration or appeal.**

(1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. In the event the department has made an order communicating the closure of a claim of a self-insured employer, the self-insured employer may serve the department order provided the self-insured employer does so using a separate, secure, and verifiable nonelectronic means of delivery and includes the department prescribed notice explaining the contents of the order and any protest or appeal rights. The service by the self-insured employer is a communication for the purposes of filing an appeal under RCW 51.52.060. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address as shown by the records of the department. Correspondence and notices sent electronically are considered received on the date sent by the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The

board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self-insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [2019 c 190 § 1; 2011 c 290 § 9; 2008 c 280 § 1; 2004 c 243 § 8; 1987 c 151 § 1; 1986 c 200 § 10; 1985 c 315 § 9; 1982 c 109 § 4; 1977 ex.s. c 350 § 75; 1975 1st ex.s. c 58 § 1; 1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 § 11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

**Application—2008 c 280:** "This act applies to orders issued on or after June 12, 2008." [2008 c 280 § 7.]

**Adoption of rules—2004 c 243:** See note following RCW 51.08.177.

#### **RCW 51.52.060 Notice of appeal — Time — Cross-appeal — Departmental options.**

(1)(a) Except as otherwise specifically provided in this section, a worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which a copy of the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

(2) Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties to the appeal of the receipt of the appeal and shall forward a copy of the notice of appeal to the other interested parties. Within twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken.

(3) If within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department directs the submission of further evidence or the investigation of any further fact, the time for filing the notice of appeal shall not commence to run until the person has been advised in writing of the final decision of the department in the matter. In the event the department directs the submission of further evidence or the investigation of any further fact, as provided in this section, the department shall render a final order, decision, or award within ninety days from the date further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days.

(4) The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may:

(a) Modify, reverse, or change any order, decision, or award; or

(b)(i) Except as provided in (b)(ii) of this subsection, hold an order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal; or

(ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

For purposes of this subsection, good cause includes delay that results from conduct of the claimant that is subject to sanction under RCW 51.32.110.

The board shall deny the appeal upon the issuance of an order under (b)(i) or (ii) of this subsection holding an earlier order, decision, or award in abeyance, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department.

This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160.

(5) An employer shall have the right to appeal an application deemed granted under RCW 51.32.160 on the same basis as any other application adjudicated pursuant to that section.

(6) A provision of this section shall not be deemed to change, alter, or modify the practice or procedure of the department for the payment of awards pending appeal. [1995 c 253 § 1; 1995 c 199 § 7; 1986 c 200 § 11; 1977 ex.s. c 350 § 76; 1975 1st ex.s. c 58 § 2; 1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949 c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4, part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem Supp. 1949 §§ 7679, part, 7697, part.]

**Reviser's note:** This section was amended by 1995 c 199 § 7 and by 1995 c 253 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1995 c 199:** See note following RCW 51.12.120.

### **RCW 51.52.063 After notice of appeal — Contact with medical providers restricted — Rules.**

(1)(a) Except as provided in (b) through (d) of this subsection, after receipt of the notice of an appeal that has been filed under RCW 51.52.060(2), the employer and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider, unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the employer or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(2)(a) Except as provided in (b) and (c) of this subsection, after receipt of the notice of an appeal under RCW 51.52.060(2), the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the employer pursuant to RCW 51.36.070, unless written authorization for contact is given by the employer or its representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the employer or its representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department, employer, and their representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the employer fails to identify or confirm the examining medical provider as a witness as required by the board.

(3) Subsections (1) and (2) of this section do not apply to the department.

(a) Except as provided in (b) through (d) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the department and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider and has been named as a witness by the worker or their representative unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the department or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(4)(a) Except as provided in (b) and (c) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the department pursuant to RCW 51.36.070, unless written authorization for contact is given by the department or its representatives. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the department or its representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department or its representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the department fails to identify or confirm the examining medical provider as a witness as required by the board.

(5) Upon motion by either party, the industrial appeals judge assigned to the case may determine whether a party has made itself reasonably available to participate in an in-person, telephone, or videoconference communication as provided in subsections (1)(c)(ii), (2)(b)(ii), (3)(c)(ii), and (4)(b)(ii) of this section. If the industrial appeals judge determines that a party has not made itself reasonably available, the judge may determine appropriate remedies including but not limited to setting a date and time for the contact being requested by a party, sanctioning the party who has not reasonably made itself available, or both.

(6) This section only applies to issues set forth in a notice of appeal under RCW 51.52.060(2).

(7) This section does not limit the reporting requirements under RCW 51.04.050 and 51.36.060 for issues not set forth in a notice of appeal.

(8) The department and board may adopt rules as necessary to implement the provisions of this section.

(9) A medical provider who discusses issues on appeal with the department or with any employer or worker or representative of any employer or worker in violation of this section shall not be held liable for such communication. [2009 c 391 § 1.]

**Application—2009 c 391:** "This act applies to orders entered on or after July 26, 2009." [2009 c 391 § 2.]

**RCW 51.52.070 Contents of notice – Transmittal of record.** The notice of appeal to the board shall set forth in full detail the grounds upon which the person appealing considers such order, decision, or award is unjust or unlawful, and shall include every issue to be considered by the board, and it must contain a detailed statement of facts upon which such worker, beneficiary, employer, or other person relies in support thereof. The worker, beneficiary, employer, or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in such notice of appeal or appearing in the records of the department. The department shall promptly transmit its original record, or a legible copy thereof produced by mechanical, photographic, or electronic means, in such matter to the board. [1977 ex.s. c 350 § 77; 1975 1st ex.s. c 224 § 18; 1975 1st ex.s. c 58 § 3; 1961 c 23 § 51.52.070. Prior: 1957 c 70 § 57; 1951 c 225 § 7; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

**Effective date—1975 1st ex.s. c 224:** See note following RCW 51.04.110.

**RCW 51.52.075 Appeal from order terminating provider's authority to provide services – Department petition for order immediately suspending provider's eligibility to participate.** When a provider files with the board an appeal from an order terminating the provider's authority to provide services related to the treatment of industrially injured workers, the department may petition the board for an order immediately suspending the provider's eligibility to participate as a provider of services to industrially injured workers under this title pending the final disposition of the appeal by the board. The board shall grant the petition if it determines that there is good cause to believe that workers covered under this title may suffer serious physical or mental harm if the petition is not granted. The board shall expedite the hearing of the department's petition under this section. [2004 c 259 § 1.]

**RCW 51.52.080 Appeal to board denied, when.** If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal. [1971 ex.s. c 289 § 69; 1963 c 148 § 2; 1961 c 23 § 51.52.080. Prior: 1957 c 70 § 58; 1951 c 225 § 8; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]



Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

**RCW 51.52.090 Appeal to board deemed granted, when.** If the appeal is not denied within thirty days after the notice is filed with the board, the appeal shall be deemed to have been granted: PROVIDED, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days. [1971 ex.s. c 289 § 70; 1961 c 23 § 51.52.090. Prior: 1957 c 70 § 59; 1951 c 225 § 9; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

**RCW 51.52.095 Conference for disposal of matters involved in appeal — Mediation of disputes.**

(1) The board, upon request of the worker, beneficiary, or employer, or upon its own motion, may direct all parties interested in an appeal, together with their attorneys, if any, to appear before it, a member of the board, or an authorized industrial appeals judge, for a conference for the purpose of determining the feasibility of settlement, the simplification of issues of law and fact, the necessity of amendments to the notice of appeal or other pleadings, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the limitation of the number of expert witnesses, and such other matters as may aid in the disposition of the appeal. Such conference may be held prior to the hearing, or it may be held during the hearing, at the discretion of the board member or industrial appeals judge conducting the same, in which case the hearing will be recessed for such conference. Following the conference, the board member or industrial appeals judge conducting the same, shall state on the record the results of such conference, and the parties present or their representatives shall state their concurrence on the record. Such agreement as stated on the record shall control the subsequent course of the proceedings, unless modified at a subsequent hearing to prevent manifest injustice. If agreement concerning final disposition of the appeal is reached by the parties present at the conference, or by the employer and worker or beneficiary, the board may enter a final decision and order in accordance therewith, providing the board finds such agreement is in conformity with the law and the facts.

(2) In order to carry out subsection (1) of this section, the board shall develop expertise to mediate disputes informally. Where possible, industrial appeals judges with a demonstrated history of successfully resolving disputes or who have received training in dispute resolution techniques shall be appointed to perform mediation functions. No industrial appeals judge who mediates in a particular appeal may, without the consent of the parties, participate in writing the proposed decision and order in the appeal: PROVIDED, That this shall not prevent an industrial appeals judge from issuing a proposed decision and order responsive to a motion for summary disposition or similar motion. This section shall not operate to prevent the board from developing additional methods and procedures to encourage resolution of disputes by agreement or otherwise making efforts to reduce adjudication time. [1986 c 10 § 1; 1985 c 209 § 2; 1982 c 109 § 7; 1977 ex.s. c 350 § 78; 1963 c 148 § 3; 1963 c 6 § 1; 1961 c 23 § 51.52.095. Prior: 1951 c 225 § 10.]

**RCW 51.52.100 Proceedings before board — Contempt.** Hearings shall be held in the county of the residence of the worker or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing shall be de novo and summary, but no witness' testimony shall be received unless he or she shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his or her testimony shall have been taken by deposition according to the statutes and rules relating to superior courts of this state. The department shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed, the same, with all depositions, shall be filed in, and remain a part of, the record on the appeal. Such hearings on appeal to the board may be conducted by one or more of its members, or a duly authorized industrial appeals judge, and depositions may be taken by a person duly commissioned for the purpose by the board.

Members of the board, its duly authorized industrial appeals judges, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his or her office.

If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the board or any member or duly authorized industrial appeals judge may certify the facts to the superior court having jurisdiction in the place in which said board or member or industrial appeals judge is sitting; the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court. [1982 c 109 § 8; 1977 ex.s. c 350 § 79; 1963 c 148 § 4; 1961 c 23 § 51.52.100. Prior: 1957 c 70 § 60; 1951 c 225 § 11; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

**RCW 51.52.102 Hearing the appeal — Dismissal — Evidence — Continuances.** At the time and place fixed for hearing each party shall present all his or her evidence with respect to the issues raised in the notice of appeal, and if any party fails

so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing, or if an appealing party who has the burden of going forward with the evidence fails to present any evidence, the board may dismiss the appeal: PROVIDED, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to interested parties: AND PROVIDED FURTHER, That the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence. [2010 c 8 § 14013; 1963 c 148 § 5; 1961 c 23 § 51.52.102. Prior: 1951 c 225 § 12.]

**RCW 51.52.104 Industrial appeals judge – Recommended decision and order – Petition for review – Finality of order.** After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be an active or judicial member of the Washington state bar association, the industrial appeals judge shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such further time as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's offices in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [2003 c 224 § 2; 1985 c 314 § 1; 1982 c 109 § 5; 1971 ex.s. c 289 § 22; 1963 c 148 § 6.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

**RCW 51.52.106 Review of decision and order.** After the filing of a petition or petitions for review as provided for in RCW 51.52.104, the proposed decision and order of the industrial appeals judge, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial: PROVIDED, That if a petition for review is not denied within said twenty days it shall be deemed to have been granted. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chair may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall, in all cases, render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his or her attorney of record. [2010 c 8 § 14014; 1982 c 109 § 9; 1975 1st ex.s. c 58 § 4; 1971 ex.s. c 289 § 23; 1965 ex.s. c 165 § 4; 1963 c 148 § 7; 1961 c 23 § 51.52.106. Prior: 1951 c 225 § 13.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

**RCW 51.52.110 Court appeal – Taking the appeal.** Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the appeal is denied as herein provided, such worker, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. If such worker, beneficiary, employer, or other person fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board to deny the petition or petitions for review or the final decision and order of the board shall become final.

In cases involving injured workers, an appeal to the superior court shall be to the superior court of the county of residence of the worker or beneficiary, as shown by the department's records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred are in the state of Washington then the appeal may be directed to the superior court for Thurston county. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer. The department shall, in all

cases not involving a self-insurer, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. If the case is one involving a self-insurer, such self-insurer shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed to be at issue. In such cases the department may appear and take part in any proceedings. The board shall serve upon the appealing party, the director, the self-insurer if the case involves a self-insurer, and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on review by the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under \*RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: PROVIDED, HOWEVER, That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court. [1988 c 202 § 49; 1982 c 109 § 6; 1977 ex.s. c 350 § 80; 1973 c 40 § 1. Prior: 1972 ex.s. c 50 § 1; 1972 ex.s. c 43 § 36; 1971 ex.s. c 289 § 24; 1971 c 81 § 122; 1961 c 23 § 51.52.110; prior: 1957 c 70 § 61; 1951 c 225 § 14; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: Cf. Title 8 RAP, RAP 18.22.

\*Reviser's note: RCW 51.48.070 was repealed by 1996 c 60 § 2.

Severability—1988 c 202: See note following RCW 2.24.050.

**RCW 51.52.112 Court appeal — Payment of taxes, penalties, and interest required.** All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest unless the court determines that there would be an undue hardship to the employer. In the event an employer prevails in a court action, the employer shall be allowed interest on all taxes, penalties, and interest paid by the employer but determined by a final order of the court to not be due, from the date such taxes, penalties, and interest were paid. Interest shall be at the rate allowed by law as prejudgment interest. [1986 c 9 § 19.]

**RCW 51.52.113 Collection of tax or penalty may not be enjoined.** No restraining order or injunction may be granted or issued by any court to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1986 c 9 § 20.]

**RCW 51.52.115 Court appeal — Procedure at trial — Burden of proof.** Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: PROVIDED, That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court. [1961 c 23 § 51.52.115. Prior: 1957 c 70 § 62; 1951 c 225 § 15; prior: (i) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (ii) 1949 c 219 § 6; 1939 c 184 § 1; Rem. Supp. 1949 § 7697-2.]

**RCW 51.52.120 Attorney's fee before department or board — Unlawful attorney's fees.**

(1) Except for claim resolution settlement agreements, it shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making

the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) For claim resolution settlement agreements, fees for attorney services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution settlement agreements consistent with the procedures in subsection (2) of this section.

(4) In an appeal to the board involving the presumption established under RCW [51.32.185](#), the attorney's fee shall be payable as set forth under RCW [51.32.185](#).

(5) Any person who violates this section is guilty of a misdemeanor. [2021 c 89 § 6; 2011 1st sp.s. c 37 § 304; 2007 c 490 § 3; 2003 c 53 § 285; 1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

Effective date—2021 c 89: See note following RCW [42.56.230](#).

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

#### **RCW 51.52.130 Attorney and witness fees in court appeal.**

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185. [2007 c 490 § 4; 1993 c 122 § 1; 1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

**RCW 51.52.132 Unlawful attorney's fees.** Where the department, the board or the court, pursuant to RCW 51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee in excess of that fixed by the department, board or the court. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1965 ex.s. c 63 § 2; 1961 c 23 § 51.52.132. Prior: 1951 c 225 § 18.]

#### **RCW 51.52.135 Worker or beneficiary entitled to interest on award — Rate.**

(1) When a worker or beneficiary prevails in an appeal by the employer to the board or in an appeal by the employer to the court from the decision and order of the board, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(2) When a worker or beneficiary prevails in an appeal by the worker or beneficiary to the board or the court regarding a claim for temporary total disability, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(3) The interest provided for in subsections (1) and (2) of this section shall accrue from the date of the department's order granting the award or denying payment of the award. The interest shall be paid by the party having the obligation to pay the award. The amount of interest to be paid shall be fixed by the board or court, as the case may be. [1983 c 301 § 1.]

**RCW 51.52.140 Rules of practice — Duties of attorney general — Supreme court appeal.** Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter. Appeal shall lie from the judgment

of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board. [1961 c 23 § 51.52.140. Prior: 1957 c 70 § 64; 1951 c 225 § 19; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

**Rules of court:** Method of appellate review superseded by RAP 2.1, 2.2.

**RCW 51.52.150 Costs on appeals.** All expenses and costs incurred by the department for board and court appeals, including fees for medical and other witnesses, court reporter costs and attorney's fees, and all costs taxed against the department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund. [1961 c 23 § 51.52.150. Prior: 1951 c 225 § 20; prior: 1931 c 116 § 1; RRS § 7697-1.]

**RCW 51.52.160 Publication and indexing of significant decisions.** The board shall publish and index its significant decisions and make them available to the public at reasonable cost. [1985 c 209 § 1.]

**RCW 51.52.200 Exception – Employers as parties to actions relating to compensation or assistance for victims of crimes.** This chapter shall not apply to matters concerning employers as parties to any settlement, appeal, or other action in accordance with chapter 7.68 RCW. [1997 c 102 § 2.]

**RCW 51.52.800 Workers' compensation study.**

(1) The department shall study appeals of workers' compensation cases and collect information on the impacts of chapter 280, Laws of 2008 on state fund and self-insured workers and employers. The study shall consider the types of benefits that may be paid pending an appeal, and shall include, but not be limited to:

- (a) The frequency and outcomes of appeals;
- (b) The duration of appeals and any procedural or process changes made by the board to implement chapter 280, Laws of 2008 and expedite the process;
- (c) The number of and amount of overpayments resulting from decisions of the board or court; and
- (d) The processes used and efforts made to recoup overpayments and the results of those efforts.

(2) State fund and self-insured employers shall provide the information requested by the department to conduct the study.

(3) The department shall report to the workers' compensation advisory committee by July 1, 2009, on the preliminary results of the study. By December 1, 2009, and annually thereafter, with the final report due by December 1, 2011, the department shall report to the workers' compensation advisory committee and the appropriate committees of the legislature on the results of the study. The workers' compensation advisory committee shall provide its recommendations for addressing overpayments resulting from chapter 280, Laws of 2008, including the need for and ability to fund a permanent method to reimburse employer and state fund overpayment costs. [2008 c 280 § 5.]

**Application—2008 c 280:** See note following RCW 51.52.050.

## Chapter 51.04 RCW GENERAL PROVISIONS

### RCW 51.04.063 Injured worker options—Claim resolution settlement agreements.

(1) Notwithstanding RCW 51.04.060 or any other provision of this title, an injured worker who is at least fifty years of age may choose from the following: (a) To continue to receive all benefits for which they are eligible under this title, (b) to participate in vocational training if eligible, or (c) to initiate and agree to a resolution of their claim with a claim resolution settlement.

(2)(a) As provided in this section, the parties to an allowed claim may initiate and agree to resolve a claim with a claim resolution settlement for all benefits other than medical. Parties as defined in (b) of this subsection may only initiate claim resolution settlements if at least one hundred eighty days have passed since the claim was received by the department or self-insurer and the order allowing the claim is final and binding. All requirements of this title regarding entitlement to and payment of benefits will apply during this period. All claim resolution settlement agreements must be approved by the board of industrial insurance appeals.

(b) For purposes of this section, "parties" means:

(i) For a state fund claim, the worker, the employer, and the department. The employer will not be a party if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums, if they cannot be located, are no longer in business, or they fail to respond or decline to participate after timely notice of the claim resolution settlement process provided by the board and the department.

(ii) For a self-insured claim, the worker and the employer.

(c) The claim resolution settlement agreements shall:

(i) Bind the parties with regard to all aspects of a claim except medical benefits unless revoked by one of the parties as provided in subsection (6) of this section;

(ii) At the option of the parties, either be paid out in a single lump sum or be paid on a structured basis. If the parties opt to have the settlement paid based on a structured basis, the agreement shall provide a periodic payment schedule to the worker equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(iii) Not set aside or reverse an allowance order;

(iv) Not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and

(v) Not subject any funds covered under this title to any responsibility or burden without prior approval from the director or designee.

(d) For state fund claims, the department shall negotiate the claim resolution settlement agreement with the worker or their representative and with the employer or employers and their representative or representatives.

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or his or her representative. Workers of self-insured employers who are unrepresented may request that the office of the ombuds for self-insured injured workers provide assistance or be present during negotiations.

(f) Terms of the agreement may include the parties' agreement that the claim shall remain open for future necessary medical or surgical treatment related to the injury where there is a reasonable expectation such treatment is necessary. The parties may also agree that specific future treatment shall be provided without the application required in RCW 51.32.160.

(g) Any claim resolution settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(h) If a worker is not represented by an attorney at the time of signing a claim resolution settlement agreement, the parties must forward a copy of the signed agreement to the board with a request for a conference with an industrial appeals judge. The industrial appeals judge must schedule a conference with all parties within fourteen days for the purpose of (i) reviewing the terms of the proposed settlement agreement by the parties; and (ii) ensuring the worker has an understanding of the benefits generally available under this title and that a claim resolution settlement agreement may alter the benefits payable on the claim or claims. The judge may schedule the initial conference for a later date with the consent of the parties.

(i) Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker.

(j) The industrial appeals judge may approve a claim resolution settlement agreement only if the judge finds that the agreement is in the best interest of the worker. When determining whether the agreement is in the best interest of the worker, the industrial appeals judge shall consider the following factors, taken as a whole, with no individual factor being determinative:

(i) The nature and extent of the injuries and disabilities of the worker;

(ii) The age and life expectancy of the injured worker;

(iii) Other benefits the injured worker is receiving or is entitled to receive and the effect a claim resolution settlement agreement might have on those benefits; and

(iv) The marital or domestic partnership status of the injured worker.

(k) Within seven days after the conference, the industrial appeals judge shall issue an order allowing or rejecting the claim resolution settlement agreement. There is no appeal from the industrial appeals judge's decision.

(l) If the industrial appeals judge issues an order allowing the claim resolution settlement agreement, the order must be submitted to the board.

(3) Upon receiving the agreement, the board shall approve it within thirty working days of receipt unless it finds that:

- (a) The parties have not entered into the agreement knowingly and willingly;
- (b) The agreement does not meet the requirements of a claim resolution settlement agreement;
- (c) The agreement is the result of a material misrepresentation of law or fact;
- (d) The agreement is the result of harassment or coercion; or
- (e) The agreement is unreasonable as a matter of law.

(4) If a worker is represented by an attorney at the time of signing a claim resolution settlement agreement, the parties shall submit the agreement directly to the board without the conference described in this section.

(5) If the board approves the agreement, it shall provide notice to all parties. The department shall place the agreement in the applicable claim file or files.

(6) A party may revoke consent to the claim resolution settlement agreement by providing written notice to the other parties and the board within thirty days after the date the agreement is approved by the board.

(7) To the extent the worker is entitled to any benefits while a claim resolution settlement agreement is being negotiated or during the revocation period of an agreement, the benefits must be paid pursuant to the requirements of this title until the agreement becomes final.

(8) A claim resolution settlement agreement that meets the conditions in this section and that has become final and binding as provided in this section is binding on all parties to the agreement as to its terms and the injuries and occupational diseases to which the agreement applies. A claim resolution settlement agreement that has become final and binding is not subject to appeal.

(9) All payments made to a worker pursuant to a final claim resolution settlement agreement must be reported to the department as claims costs pursuant to this title. If a self-insured employer contracts with a third-party administrator for claim services and the payment of benefits under this title, the third-party administrator shall also disburse the claim resolution settlement payments pursuant to the agreement.

(10) Claims closed pursuant to a claim resolution settlement agreement can be reopened pursuant to RCW 51.32.160 for medical treatment only. Further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable under the same claim or claims for which a claim resolution settlement agreement has been approved by the board and has become final.

(11) Parties aggrieved by the failure of any other party to comply with the terms of a claim resolution settlement agreement have one year from the date of failure to comply to petition to the board. If the board determines that a party has failed to comply with an agreement, it will order compliance and will impose a penalty payable to the aggrieved party of up to twenty-five percent of the monetary amount unpaid at the time the petition for noncompliance was filed. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution settlement agreements.

(12) Parties and their representatives may not use settlement offers or the claim resolution settlement agreement process to harass or coerce any party. If the department determines that an employer has engaged in a pattern of harassment or coercion, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030.

(13) All information related to individual claim resolution settlement agreements submitted to the board of industrial insurance appeals, other than final orders from the board of industrial insurance appeals, is private and exempt from disclosure under chapter 42.56 RCW. The board of industrial insurance appeals shall provide to the department copies of all final claim resolution settlement agreements.

(14) Information gathered during the claim resolution settlement agreement process, including but not limited to forms filled out by the parties and testimony during a claim resolution settlement conference before the board of industrial insurance appeals, is a statement made in the course of compromise negotiations and is inadmissible in any future litigation. [2021 c 89 § 3; 2014 c 142 § 2; 2013 c 23 § 104; 2011 1st sp.s. c 37 § 302.]

**Effective date**—2021 c 89: See note following RCW 42.56.230.

**Rules**—2011 1st sp.s. c 37 §§ 302 and 303: "The department of labor and industries and the board of industrial insurance appeals shall adopt rules as necessary to implement sections 302 and 303 of this act." [2011 1st sp.s. c 37 § 305.]

**Finding**—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

## Chapter 7.68 RCW

### VICTIMS OF CRIMES—COMPENSATION, ASSISTANCE

**RCW 7.68.110 Appeals.** The provisions contained in chapter 51.52 RCW relating to appeals shall govern appeals under this chapter: PROVIDED, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal, or other action shall apply to this chapter: PROVIDED FURTHER, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department shall have the same right of review from a decision of the board of industrial insurance appeals as does the claimant: PROVIDED FURTHER, That the time in which to file a protest or appeal from any order, decision, or award under this chapter shall be ninety days from the date the order, decision, or award is communicated to the parties. [1997 c 102 § 1; 1989 c 175 § 40; 1977 ex.s. c 302 § 7; 1975 1st ex.s. c 176 § 5; 1973 1st ex.s. c 122 § 11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

## Chapter 49.17 RCW

### WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

**RCW 49.17.140 Appeal to board – Notification of assessment of penalty – Final order – Procedure – Redetermination – Hearing – Rules.**

(1) If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (4) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which the employer was previously cited and which has become a final order, the director shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If the director has reason to believe that an employer violated an order immediately restraining a condition, practice, method, process, or means in the workplace issued under RCW 49.17.130 or this section or a notice prohibiting the use of a machine or equipment to which a notice prohibiting such use has been attached, the director shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of such violation of the order and of the penalty to be assessed under RCW 49.17.180 by reason of violation of the order and shall state that the employer has 15 working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within 15 working days from the receipt of notification issued by the director[,] the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(4) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to forty-five additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full



copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. Except as otherwise provided under subsection (5) of this section, a notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

(5) An appeal of any violation classified and cited as serious, willful, repeated serious violation, or failure to abate a serious violation does not stay abatement dates and requirements except as follows:

(a) An employer may request a stay of abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation in a notice of appeal under subsection (4) of this section;

(b) When the director reassumes jurisdiction of an appeal under subsection (4) of this section, it will include the stay of abatement request. The issued redetermination decision will include a decision on the stay of abatement request. The department shall stay the abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation where the department cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The decision on stay of abatement will be final unless the employer renews the request for a stay of abatement in any direct appeal of the redetermination to the board of industrial insurance appeals under subsection (4) of this section;

(c) The board of industrial insurance appeals shall adopt rules necessary for conducting an expedited review on any stay of abatement requests identified in the employer's notice of appeal, and shall issue a final decision within forty-five working days of the board's notice of filing of appeal. This rule making shall be initiated in 2011;

(d) Affected employees or their representatives must be afforded an opportunity to participate as parties in an expedited review for stay of abatement;

(e) The board shall grant a stay of an abatement for a serious, willful, repeated serious violation, or failure to abate a serious violation where there is good cause for a stay unless based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker;

(f) As long as a motion to stay abatement is pending all abatement requirements will be stayed.

(6) When the board of industrial insurance appeals denies a stay of abatement and abatement is required while the appeal is adjudicated, the abatement process must be the same process as the process required for abatement upon a final order.

(7) The department shall develop rules necessary to implement subsections (5) and (6) of this section. In an application for a stay of abatement, the department will not grant a stay when it can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The board will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker. This rule making shall be initiated in 2011. [2021 c 253 § 2; 2017 c 13 § 1. Prior: 2011 c 301 § 13; 2011 c 91 § 1; 1994 c 61 § 1; 1986 c 20 § 1; 1973 c 80 § 14.]

#### **RCW 49.17.150 Appeal to superior court – Review or enforcement of orders.**

(1) Any person aggrieved by an order of the board of industrial insurance appeals issued under RCW 49.17.140(3) may obtain a review of such order in the superior court for the county in which the violation is alleged to have occurred, by filing in such court within thirty days following the communication of the board's order or denial of any petition or petitions for review, a written notice of appeal praying that the order be modified or set aside. Such appeal shall be perfected by filing with the clerk of the court and by serving a copy thereof by mail, or personally, on the director and on the board. The board shall thereupon transmit a copy of the notice of appeal to all parties who participated in proceedings before the board, and shall file in the court the complete record of the proceedings. Upon such filing the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings and the record of proceedings a decree affirming, modifying, or setting aside in all or in part, the decision of the board of industrial insurance appeals and enforcing the same to the extent that such order is affirmed or modified. The commencement of appellate proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the board of industrial insurance appeals. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board or hearing examiner where the board has denied a petition or petitions for review with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings

with respect to questions of fact are supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and the judgment and decree shall be final, except as the same shall be subject to review by the supreme court. Appeals filed under this subsection shall be heard expeditiously.

(2) The director may also obtain review or enforcement of any final order of the board by filing a petition for such relief in the superior court for the county in which the alleged violation occurred. The provisions of subsection (1) of this section shall govern such proceeding to the extent applicable. If a notice of appeal, as provided in subsection (1) of this section, is not filed within thirty days after service of the board's order, the board's findings of fact, decision, and order or the examiner's findings of fact, decision, and order when a petition or petitions for review have been denied shall be conclusive in connection with any petition for enforcement which is filed by the director after the expiration of such thirty day period. In any such case, as well as in the case of an unappealed citation or a notification of the assessment of a penalty by the director, which has become a final order under subsection (1) or (2) of RCW 49.17.140 upon application of the director, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the citation and notice of assessment of penalty and shall transmit a copy of such decree to the director and the employer named in the director's petition. In any contempt proceeding brought to enforce a decree of the superior court entered pursuant to this subsection or subsection (1) of this section the superior court may assess the penalties provided in RCW 49.17.180, in addition to invoking any other available remedies. [1982 c 109 § 1; 1973 c 80 § 15.]

#### **RCW 49.17.160 Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy.**

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter. Prohibited discrimination includes an action that would deter a reasonable employee from exercising their rights under this chapter.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 90 days after such violation occurs, file a complaint with the director alleging such discrimination. The department may, at its discretion, extend the time period on recognized equitable principles or due to extenuating circumstances.

(3) Within 90 days of the receipt of the complaint filed under this section, the director shall notify the complainant and the employer of his or her determination under subsections (4) and (5) of this section unless the matter is otherwise resolved. The department may extend the period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(4)(a) If the director determines that the provisions of this section have been violated, the director will issue a citation and notice of assessment describing the violation to the employer, ordering all appropriate relief, and may assess a civil penalty.

(b) Appropriate relief may include, but is not limited to, the following:

(i) Restoring the complainant to the position of employment held by the complainant when the discrimination occurred, or restoring the complainant to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment; and

(ii) Ordering the employer to make payable to the complainant earnings that the complainant did not receive due to the employer's discriminatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee.

(c) A civil penalty not to exceed the maximum penalty for a serious violation under this chapter may be assessed for the first occurrence. A civil penalty not to exceed the maximum penalty for a repeat violation under this chapter may be assessed for each repeat occurrence. Civil penalties are not contingent upon relief being granted to the worker.

(5) If the director finds there is insufficient evidence to determine that the provisions of this section have been violated, the director will issue a letter of closure and the employee may institute the action on his or her own behalf within 30 days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the complainant to his or her former position with back pay.

(6) The department must notify the employer and the complainant of a citation and notice of assessment issued under subsection (4) of this section using a method by which the mailing can be tracked or the delivery can be confirmed. Citations and notices of assessments shall state that the employer has 30 days within which to notify the department that the employer wishes to appeal the citation or notice of assessment, and that the complainant has 15 working days within which to notify the department that the complainant wishes to appeal the order of appropriate relief in the notice of assessment. If, within 30 days from the communication of the notice issued by the director, the employer fails to notify the department that the employer intends to appeal the citation or notice of assessment, and no notice of appeal of the order of appropriate relief is filed by the complainant within such time, the citation and notice of assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(7) If an employer or complainant notifies the department of an appeal, the department may reassume jurisdiction according to the timeline, process for hearing, and issuance of corrective notices of redetermination under RCW 49.17.140(4). The redetermination shall become final subject to direct appeal by an employer or complainant to the board of industrial insurance appeals within 15 working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal the citation and notice of assessment and certify a full copy of the record in such appeal matters to the board. The board of industrial insurance appeals shall

afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide the complainant an opportunity to participate as a party to hearings of employer appeals under this subsection and provide the employer an opportunity to participate as a party to hearings of complainant appeals under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of assessment except orders of reinstatement pending review by the board of industrial insurance appeals.

(8) Civil penalties imposed under this section shall be paid to the director for deposit in the supplemental pension fund established in RCW 51.44.033.

(9) Collections of amounts owed for unpaid citations and notices of assessment will be handled pursuant to the procedures outlined in RCW 51.48.120 through 51.48.150.

(10) Nothing in this section diminishes the rights, privileges, or remedies of any employee under any federal or state law or under any collective bargaining agreement. The department and complainant may pursue remedies in superior court that are outside the board of industrial insurance appeals' jurisdiction. [2021 c 253 § 3; 2010 c 8 § 12013; 1973 c 80 § 16.]

**RCW 49.17.200 Confidentiality – Trade secrets.** All information reported to or otherwise obtained by the director, or his or her authorized representative, in connection with any inspection or proceeding under the authority of this chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. [2010 c 8 § 12017; 1973 c 80 § 20.]

Uniform trade secrets act: Chapter 19.108 RCW.

## Chapter 49.22 RCW SAFETY — CRIME PREVENTION

**RCW 49.22.030 Enforcement.** The requirements of this chapter shall be implemented and enforced, including rules, citations, violations, penalties, appeals, and other administrative procedures by the director of the department of labor and industries pursuant to the Washington industrial safety and health act of 1973, chapter 49.17 RCW. [1989 c 357 § 4.]

## Chapter 49.26 RCW HEALTH AND SAFETY — ASBESTOS

**RCW 49.26.110 Asbestos projects – Worker's and supervisor's certificates.**

(1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department.

(2) To qualify for a certificate:

(a) Certified asbestos workers must have successfully completed a four-day training course. Certified asbestos supervisors must have completed a five-day training course. Training courses shall be provided or approved by the department; shall cover such topics as the health and safety aspects of the removal and encapsulation of asbestos, including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination; and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor. However, the authority of the director to adopt rules implementing this section is limited to rules that are specifically required, and only to the extent specifically required, for the standards to be as stringent as the applicable federal laws governing work subject to this chapter; and

(b) All applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department.

These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed using a method by which the mailing can be tracked or the delivery can be confirmed to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department. [2011 c 301 § 14; 1995 c 218 § 4; 1989 c 154 § 5. Prior: 1988 c 271 § 10; 1985 c 387 § 2.]

**Purpose—Severability—1989 c 154:** See notes following RCW 49.26.013.

## **Chapter 49.70 RCW**

### **WORKER AND COMMUNITY RIGHT TO KNOW ACT**

#### **RCW 49.70.170 Worker and community right to know fund — Employer assessments — Audits — Appeal of assessment.**

(1) The worker and community right to know fund is hereby established in the custody of the state treasurer. The department shall deposit all moneys received under this chapter in the fund. Moneys in the fund may be spent only for the purposes of this chapter following legislative appropriation. Disbursements from the fund shall be on authorization of the director or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW.

(2) The department shall assess each employer who reported ten thousand four hundred or more worker hours in the prior calendar year an annual fee to provide for the implementation of this chapter. The department shall adopt rules establishing a fee schedule for all employers who reported ten thousand four hundred or more worker hours in the prior calendar year and are engaged in business operations in the following industries, as classified by the current industry classification system used by the bureau of labor statistics: Agriculture and forestry industries; mining, quarrying, and oil and gas extraction; construction industries; manufacturing industries; transportation, pipeline, communications, electric, gas, and sanitary services; automotive repair, services, and garages; miscellaneous repair services; health services; and educational services. The department shall establish the annual fee for each employer who reported ten thousand four hundred or more worker hours in the prior calendar year in industries identified by this section, provided that fees assessed shall not be more than two dollars and fifty cents per full time equivalent employee. The annual fee shall not exceed fifty thousand dollars. The fees shall be collected solely from employers whose industries have been identified by rule under this chapter. The department shall adopt rules allowing employers who do not have hazardous substances at their workplace to request an exemption from the assessment and shall establish penalties for fraudulent exemption requests. All fees collected by the department pursuant to this section shall be collected in a cost-efficient manner and shall be deposited in the fund.

(3) Records required by this chapter shall at all times be open to the inspection of the director, or his or her designee including, the traveling auditors, agents, or assistants of the department provided for in RCW 51.16.070 and 51.48.040. The information obtained from employer records under the provisions of this section shall be subject to the same confidentiality requirements as set forth in RCW 51.16.070.

(4) An employer may appeal the assessment of the fee or penalties pursuant to the procedures set forth in Title 51 RCW and accompanying rules except that the employer shall not have the right of appeal to superior court as provided in Title 51 RCW. The employer from whom the fee or penalty is demanded or enforced, may however, within thirty days of the board of industrial insurance appeal's final order, pay the fee or penalty under written protest setting forth all the grounds upon which such fee or penalty is claimed to be unlawful, excessive, or otherwise improper and thereafter bring an action in superior court against the department to recover such fee or penalty or any portion of the fee or penalty which was paid under protest.

(5) Repayment shall be made to the general fund of any moneys appropriated by law in order to implement this chapter. [2016 c 168 § 1; 2010 c 8 § 12068; 2004 c 276 § 911; 2001 2nd sp.s. c 7 § 913; 1999 c 309 § 917; 1986 c 310 § 1; 1984 c 289 § 24.]

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

## Chapter 51.48 RCW PENALTIES

**RCW 51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents.** If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by a method for which receipt can be confirmed or tracked to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries. [2011 c 290 § 7; 1995 c 160 § 5; 1986 c 9 § 10; 1985 c 315 § 6; 1972 ex.s. c 43 § 32.]

**RCW 51.48.131 Notice of assessment for default in payments by employer—Appeal.** A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due.

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

The burden of proof rests upon the employer in an appeal to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers. [1989 c 175 § 120; 1987 c 316 § 3; 1985 c 315 § 7.]

Effective date—1989 c 175: See note following RCW 34.05.010.

## Chapter 70.74 RCW WASHINGTON STATE EXPLOSIVES ACT

**RCW 70.74.390 Implementation of chapter and rules pursuant to chapter 49.17 RCW.** Unless specifically provided otherwise by statute, this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1988 c 198 § 11.]

## Chapter 88.04 RCW CHARTER BOAT SAFETY ACT

**RCW 88.04.085 Application of Washington industrial safety and health act.** Unless specifically provided by statute this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1989 c 295 § 12.]

## STATUTORY DEATH BENEFITS FOR WASHINGTON PUBLIC EMPLOYEES

RCW 41.04.017 (Public Employment) Death benefit—Course of employment—Occupational disease or infection.

RCW 41.26.048 (Law Enforcement and Firefighters) Special death benefit—Death in the course of employment—Death from disease or infection arising from employment—Annual adjustment.

RCW 41.32.053 (Teachers) Death benefit—Course of employment—Occupational disease or infection.

RCW 41.35.115 (Washington School Employees) Death benefit—Course of employment—Occupational disease or infection.

RCW 41.37.110 (Retired Public Safety Employees) Death benefit—Course of employment—Occupational disease or infection.

RCW 41.40.0931 (Police Officer) Death benefit—Course of employment as a police officer—Occupational disease or infection

RCW 41.40.0932 (Retired Public Employees) Death benefit—Course of employment—Occupational disease or infection.

RCW 43.43.285 (State Patrol) Special death benefit—Course of employment—Occupational disease or infection—Annual adjustment.

## MISCELLANEOUS PROVISIONS REGARDING BOARD RECORD

**RCW 51.04.050 Physician or licensed advanced registered nurse practitioner's testimony not privileged.** In all hearings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to patient. [2004 c 65 § 2; 1961 c 23 § 51.04.050. Prior: 1915 c 188 § 4; RRS § 7687.]

**Report to legislature—Effective date—Severability—2004 c 65:** See notes following RCW 51.04.030.

### **RCW 51.48.030 Failure to keep records and make reports.**

(1) Every employer who fails to keep and preserve the records required by this title or fails to make the reports provided in this title shall be subject to a penalty determined by the director but not to exceed five hundred dollars or two hundred percent of the quarterly tax for each such offense, whichever is greater. Any employer who fails to keep and preserve the records adequate to determine taxes due shall be forever barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department based on any period for which such records have not been kept and preserved.

(2) The department may waive penalties for first-time or de minimis violations of this section. Any penalty that is waived under this section may be reinstated and imposed in addition to any additional penalties associated with a subsequent violation or failure within a year to correct the previous violation as required by the department. [2020 c 277 § 3; 1986 c 9 § 8; 1985 c 347 § 4; 1982 c 63 § 21; 1971 ex.s. c 289 § 64; 1961 c 23 § 51.48.030. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

**Effective date—2020 c 277 §§ 1-7:** See note following RCW 51.48.010.

**Effective dates—Implementation—1982 c 63:** See note following RCW 51.32.095.

**Effective dates—Severability—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

### **RCW 51.48.040 Inspection of employer's records.**

(1) The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title.

(2) Refusal on the part of the employer to submit his or her books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed five hundred dollars for each offense and the individual who personally gives such refusal is guilty of a misdemeanor.

(3) Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection. [2020 c 277 § 4; 2003 c 53 § 282; 1986 c 9 § 9; 1985 c 347 § 5; 1961 c 23 § 51.48.040. Prior: 1911 c 74 § 15, part; RRS § 7690, part.]

**Effective date—2020 c 277 §§ 1-7:** See note following RCW 51.48.010.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

### **RCW 42.56.230 Personal information.**

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of children, youth, and families;

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs;

(iii) For the family members or guardians of a child who is subject to the exemption under this subsection (2) if the family member or guardian has the same last name as the child or if the family member or guardian resides at the same address as the child and disclosure of the family member's or guardian's information would result in disclosure of the personal information exempted under (a)(i) and (ii) of this subsection; or

(iv) For substitute caregivers who are licensed or approved to provide overnight care of children by the department of children, youth, and families.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;  
(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicaid issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicaid that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in (c) of this subsection (7) and this subsection (7)(d) that is subject to public disclosure;

(8) All information related to individual claim resolution settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals. The board of industrial insurance appeals shall provide to the department of labor and industries copies of all final claim resolution settlement agreements;

(9) Voluntarily submitted information contained in a database that is part of or associated with enhanced 911 emergency communications systems, or information contained or used in emergency notification systems as provided under RCW 38.52.575 and 38.52.577;

(10) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter 29A.08 RCW, that relates to a future voter, except for the purpose of processing and delivering ballots;

(11) All information submitted by a person to the state, either directly or through a state-licensed gambling establishment, or Indian tribes, or tribal enterprises that own gambling operations or facilities with class III gaming compacts, as part of the self-exclusion program established in RCW 9.46.071 or 67.70.040 for people with a gambling problem or gambling disorder; and

(12) Names, addresses, or other personal information of individuals who participated in the bump-fire stock buy-back program under \*RCW 43.43.920. [ 2021 c 89 § 1. Prior: 2019 c 470 § 8; 2019 c 239 § 2; (2019 c 239 § 1 expired July 1, 2019); 2019 c 213 § 2; 2018 c 109 § 16; 2017 3rd sp.s. c 6 § 222; prior: 2015 c 224 § 2; 2015 c 47 § 1; 2014 c 142 § 1; prior: 2013 c 336 § 3; 2013 c 220 § 1; prior: 2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

**\*Reviser's note:** RCW 43.43.920 expired January 1, 2020.

**Effective date—2021 c 89:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 2021]." [ 2021 c 89 § 7.]

**Expiration date—Effective date—2019 c 239 §§ 1 and 2:** "(1) Section 1 of this act expires July 1, 2019. (2) Section 2 of this act takes effect July 1, 2019." [2019 c 239 § 4.]

**Effective date—2019 c 239:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 30, 2019]." [ 2019 c 239 § 5.]

**Application—2019 c 239:** "The exemptions in this act apply to any public records requests made prior to April 30, 2019, for which the disclosure of records has not already occurred." [ 2019 c 239 § 3.]

**Findings—Intent—Effective date—2018 c 109:** See notes following RCW 29A.08.170.

**Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822:** See note following RCW 43.216.025.

**Conflict with federal requirements—2017 3rd sp.s. c 6:** See RCW 43.216.908.

**Effective date—2013 c 336:** See note following RCW 46.08.066.

**Effective date—2011 c 350:** See note following RCW 46.20.111.

**Effective date—2010 c 106:** See note following RCW 35.102.145.

**Effective date—2009 c 510:** See RCW 31.45.901.

**Finding—Intent—Liberal construction—2009 c 510:** See note following RCW 31.45.010.

**RCW 42.56.400 Insurance and financial institutions.** The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2—28 omitted). [2022 c 8 § 2. Prior: 2020 c 243 § 4; 2019 c 389 § 102; prior: 2018 c 260 § 32. Prior: 2017 3rd sp.s. c 30 § 2; 2017 c 193 § 2; prior: 2016 c 142 § 20; (2016 c 142 § 19 expired July 1, 2017); 2016 c 122 § 4; prior: 2015 c 122 § 14; 2015 c 122 § 13; 2015 c 17 § 11; 2015 c 17 § 10; prior: 2013 c 277 § 5; 2013 c 65 § 5; 2012 2nd sp.s. c 3 § 8; 2012 c 222 § 2; 2011 c 188 § 21; prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]