



Surprise!

You have been selected for a workers' compensation audit

A guide for Washington state fund employers.

By Jennifer L. Truong ■ June 7, 2017

With few exceptions, employers doing business in the state of Washington are required to have workers' compensation insurance for their employees.¹ The Department of Labor and Industries will often notify employers of an audit via mail, which includes a request for responses to a pre-audit questionnaire and notice of the date upon which a physical audit will take place. It is crucial that employers take the audit notice seriously as failure to respond or appear could result in increased penalties and/or preclude an ability for appeal.

Why was your particular business selected for an audit? There are a variety of considerations:

- Your business may be part of a "target" industry as deemed by the Department. For example, in years past the Department has emphasized audits for staffing agencies and telecommunication companies.
- Someone has filed a complaint alleging that an aspect of your business may be in violation of a regulation that the Department enforces.
- Your business has not set up an account with the Department, but an injured employee is seeking industrial insurance coverage; this will be a Department red flag.
- The Department may observe inconsistent reporting or discrepancies of asserted exemptions.
- The Department may randomly choose your business as part of the Department's process in developing premium rates.

The audit process will involve an assessment of requested documentation as well as interviews with management and employees to determine whether information reported to the Department has been accurate. An employer refusing to submit records for inspection may be subject to monetary penalties and the individual who personally gives such refusal could be guilty of a misdemeanor.²

It is important for employers to keep accurate records. Specifically, what type of records will the Department request? Some examples include:

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- Time records.
- Banking information: check registers, earning records, statements, issued checks.
- Financial records: cash ledgers, sales reports, accounts receivable and accounts payable records, expense records and tax returns.
- Contracts and service agreements.
- Administrative: articles of incorporation/formation and meeting records.

Upon audit completion, the Department may assess penalties for a number of alleged violations such as incorrect risk classification, unreported employees, incorrect use of the independent contractor exemption and inadequate record keeping. If penalties are assessed, the Department will formally issue a Notice and Order of Assessment of Industrial Insurance Taxes. The order will provide important details about the period(s) of assessment and a total balance due for premiums, penalties and interest. Most importantly the order will set forth appeal deadlines and procedures.

An employer disputing the Department's assessment has two options: (1) request reconsideration at the Department level or (2) appeal directly to the Board of Industrial Insurance Appeals (Board). Employers must respond in writing and comply with the strict 30-day deadline to preserve rights or the assessment order becomes final.³

Employers that elect to pursue reconsideration at the Department will receive a Notice of Receipt of Request for Reconsideration and Process Information. It is crucial that the employer respond to the Litigation Specialist within the 15-day deadline to select the form of reconsideration: (1) informal conference requiring personal appearance or (2) file review. The latter precludes the ability to provide additional documentation.

For employers appealing directly to the Board, the first milestone will include a mediation conference that is attended by the employer, an Industrial Appeals Mediation Judge, an Assistant Attorney General attorney or paralegal representing the Department and a Litigation Specialist. The employer representative should be prepared to address the jurisdictional history, any issues of timeliness, the grounds upon which the employer seeks relief and whether a continued mediation is required or if parties' have reached an impasse and require a hearing. If settlement cannot be obtained in mediation the matter will then be set for hearings. Most employers at this juncture seek legal guidance as the Washington Rules of Civil Procedure apply to hearings.

Engaging counsel for consultation early on may help identify and address reporting errors prior to an audit. During the audit process, employers have found it beneficial to have an advocate to provide guidance during interactions with the Department. Your advocate can help ensure information requested is

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in fact required to be divulged based on considerations of subject matter and/or time limitations.

Navigating through the appeal and reconsideration options will require an assessment of your business objectives and your likelihood of a successful challenge to the Department's findings. The attorneys at Reinisch Wilson Weier PC have assisted employers with their audits and are here to assist employers at any stage of an audit. ■

¹ WAC 296-17-31004

² RCW 51.48.040

³ WAC 263-12-060

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