

## Vocational Rehabilitation

### Self-insurance Claims Adjudication Guidelines

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## Determination of Eligibility for Rehabilitation Benefits

[WAC 296-15-4302](#), [WAC 296-19A-070](#)

Determination of eligibility for vocational rehabilitation benefits is at the sole discretion of the supervisor of industrial insurance or the supervisor's designee. When making this determination, the supervisor or supervisor's designee considers the conclusion reported by the self-insurer in the [Self-Insurance Vocational Reporting Form](#) (SIVRF). This report should take into account the following variables:

- The injured worker's education and past work experiences.
- Any physical and/or mental restrictions which are a direct result of the industrial injury, or which existed prior to the industrial injury, or which exist as a result of unrelated past industrial injury conditions.
- Those acquired or demonstrated work-related skills which remain viable in light of the injured worker's physical and/or mental limitations (transferable skills).
- Labor market data reflecting the existence of occupational options consistent with the injured worker's transferable skills which are within the worker's labor market.

## Interpreting the Terms [RCW 51.32.095\(1\)](#), [WAC 296-19A-010](#)

Policy 6.41 is to be used for interpreting the terms "employable", "gainful employment" and "necessary and likely".

### Employable

One of the primary purposes of [RCW 51.32.095](#) (Vocational Rehabilitation Services) is to enable the injured worker to become employable at gainful employment.

Determination of eligibility for vocational services is the sole discretion of the supervisor or the supervisor's designee. When making the determination the self-insured considers the recommendation as reported in the [Self-Insurance Vocational Reporting Form](#) (SIVRF).

Employable:

- "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:
  - Age, education, and experience;
  - Preexisting physical and mental limitations; and
  - Physical and/or mental limitations caused, at least in part, by the worker's industrial injury or occupational disease.

- Physical and/or mental limitations that arose after the industrial injury/occupational disease that were not caused or aggravated by the industrial disease are not considered in determining whether the worker is employable under the Industrial Insurance Act.

The following facts should be established when deciding an injured worker is employable based on transferrable skills:

- Transferrable skills are any combination of learned or demonstrated behavior, education, training, work traits, and work-related skills that can be readily applied by the worker. They are skills that are interchangeable among different jobs and workplaces. Nonwork-related talents or skills that are both demonstrated and applicable may also be considered.
- Labor Market: Generally, the worker's relevant labor market is the geographic area where the worker was last gainfully employed. The labor market must be within a reasonable commuting distance consistent with the industrially injured or ill worker's physical and mental capacities.

## Gainful Employment

Gainful employment means any occupation, not to exclude self-employment, which allows a worker to be compensated with wages or other earnings considering [RCW 51.12.020](#).

## Employable or Able to Work [WAC 296-15-4304](#)

If the injured worker is found employable, they will not be eligible for vocational services. A determination of employable/not eligible will result in the termination of time loss benefits.

## Eligible for Vocational Services [WAC 296-19A-220](#)

Vocational services are those services designed to enable the injured worker to become employable at gainful employment. Time loss benefits will continue while the worker is actively and successfully undergoing a formal program of vocational rehabilitation or on the job training.

## Vocational Services [RCW 51.32.095\(3\)](#), [WAC 296-19A-010](#)

Vocational services are those services designed to enable the injured worker to become employable at gainful employment. Time loss benefits will continue while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

## Not Likely to Benefit from Vocational Services

The following factors, but not limited to these factors, may render an injured worker unemployable and not likely to benefit from vocational rehabilitation services:

- Direct effects of the industrial injury.
- Condition(s) pre-existing the industrial injury.
- Unrelated, post-industrial injury circumstances.
- Injured worker's action(s) that preclude his/her ability to benefit such as non-cooperation with services.

## **Injured Worker's Responsibility** [RCW 51.32.110](#), [WAC 296-19A-030](#)(4)

If the worker refuses to submit to medical examination, or obstructs the same, or persists in unsanitary or injurious practices which imperils or retards recovery, or refuses medical or surgical treatment as is reasonably essential to recovery or refuses or obstructs evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or self-insurer upon approval by the department, with notice to the worker, may suspend any further action on any claim if such refusal obstructs, obstruction, noncooperation or practice continues and reduce, suspend, or deny any compensation for such period: PROVIDED, That the department or self-insurer shall not suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if such worker has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section ([RCW 51.32.110](#)).

The worker must fully participate and cooperate in all aspects of their vocational services including determination of physical capacities, development of vocational goals, and implementation of the rehabilitation process ([WAC 296-19A-030](#)).

## **Vocational Rehabilitation Plan** [RCW 51.32.095](#)(2)&(3), [WAC 296-15-4306](#)

When plan development services are completed, the vocational rehabilitation provider must submit the following:

- Vocational Rehabilitation Plan: The vocational rehabilitation provider must address the return to work priorities in [RCW 51.32.095](#)(2) in the plan and explain why each preceding priority would not help the worker return to work and include the following information:
  - An assessment of the worker's skills and abilities considering the worker's:
    - Physical capacities and mental status.
    - Aptitudes.
    - Transferrable skills gained through prior work experience, education, training, hobbies, volunteer experience or other non-work related activities.
  - Proposed occupational goal.
  - The services necessary to enable the worker to become employable in the labor market.

- Labor market survey as defined in [WAC 296-19A-140](#) supportive of the worker's employability upon plan completion.
- Documentation of the time and costs for completion of the plan.
- A medically approved job analysis for the proposed retraining job goal.
- A list of the skills the worker the worker will acquire through retraining.
- A description of the services that will be provided prior to completion of the plan that will assist the worker to successfully transition to gainful employment.
- Any further information that may significantly affect the plan; and
- An accountability agreement signed by the vocational rehabilitation provider and worker that:
  - Acknowledges that the vocational rehabilitation provider and the worker have reviewed, understand, and agree to the vocational rehabilitation plan.
  - Sets forth the vocational rehabilitation provider's and worker's responsibilities for the successfully implementation and completion of the vocational rehabilitation plan.
  - Details expectations regarding progress, attendance, and other factors influencing completion of the plan; and
  - Acknowledges the worker understands that the failure to comply with the agreed expectation will result in the initiation of the process to suspend benefits in accordance with [RCW 51.32.110](#) and [WAC 296-14-410](#).

The vocational rehabilitation provider must use a statement approved by, or substantially similar to a statement used by the department in order to document this agreement.

## **Failure to Meet Accountability Agreement** [RCW 51.32.110](#), [RCW 51.32.099](#)

As used in this section, "vocational plan interruption" means occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (c) of this section.

- When a vocational plan interruption is beyond the control of the worker, the department of self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when the documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.
- When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with [RCW 51.32.110](#). If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to

meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or post injury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section.

## **Closing Report** [WAC 296-15-4312](#)

If the vocational rehabilitation provider has to stop plan development before a rehabilitation plan is approved, the vocational rehabilitation provider must submit a plan development closing report. The report must include:

- A list of reasons the vocational rehabilitation provider cannot proceed with vocational rehabilitation plan development activities.
- Supporting documentation such as: The goals that were researched; the job analyses that were developed, and/or labor market research as defined by [WAC 296-19A-140](#) that was conducted; and
- An assessment addressing whether further vocational rehabilitation services may be necessary and likely to enable the worker to become employable.

## **Plan Time and Costs**

A vocational plan may be authorized to a maximum of 2 years.

Costs that may be authorized for plan services include tuition, books, supplies, equipment, child or dependent care, and other necessary expenses.

The amount available for training is adjusted on July 1 each year. See [Training Options](#) for the current amount.

## **Option 2** [RCW 51.32.099](#), [WAC 296-15-4316](#), [WAC 296-15-4318](#), [WAC 296-19A-610](#), [WAC 296-19A-620](#)

Once L&I has approved a vocational plan, the worker can either participate in that plan ("Option 1"), or decline further vocational rehabilitation services and choose Option 2 benefits. For plans approved on or after July 31, 2015, the Option 2 award is equal to 9 months of time-loss compensation. When the award payments are made over a period that includes July 1, the appropriate cost-of-living adjustment must be applied. This award is not subject to social security offset.

The worker may choose Option 2 after starting the Option 1 retraining plan. The worker has up to 15 days after the end of the first academic quarter or three months of retraining to make the Option 2 selection. If the Option Selection Form isn't received by the self-insured employer or their

claims representative by the first day of the Option 1 retraining plan, the worker is expected to begin the Option 1 retraining.

If a worker chooses Option 2 after starting Option 1 retraining:

- The Option 2 training benefit will be reduced by the amount expended during the Option 1 retraining plan.
- The nine-month vocational award will be reduced by any time-loss paid since the beginning of the Option 1 retraining plan.

Under Option 2, the worker can still seek training even though the claim will be closed. Training funds must be made available, with some limits, for up to five years (see [Training Options](#) for the current amount). Generally, these funds can be used for tuition or training and certain related costs if the worker pursues training or education at an accredited, licensed, or L&I-approved institution or program. The training goal or program does not have to be the same as the one that L&I approved.

When a worker elects Option 2 benefits, the self-insurer must take the actions outlined in [WAC 296-15-4316](#) within 5 working days of receiving the worker's request.

## Loss of Earning Power

Loss of Earning Power (LEP) may be considered, under certain circumstances, as part of a vocational rehabilitation plan. Approval can only be extended during the approved period of the vocational rehabilitation plan. Any consideration for continuation of LEP after completion of the plan must be based upon medical opinion and information indicating the injured worker's condition is not fixed and stable.

## Vocational Disputes [RCW 51.32.095\(6\)](#), [WAC 296-19A-410 through WAC 296-19A-470](#)

The Vocational Dispute Resolution Office (VDRO) has specific responsibilities as pursuant to [WAC 296-19A-460](#) (disputes). The VDRO office evaluates dispute issues and makes recommendations for dispute resolution to the Director. The dispute outcome can be appealed to the Board of Industrial Insurance Appeals (BIIA). However, the BIIA will not determine the merits of the case but whether the director has been arbitrary or capricious in the use of his/her discretion.

The authority for vocational disputes is found in statute which states in part: "... The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties."

The dispute process is provided to avoid a delay in the vocational rehabilitation process. Eligibility determinations and the suitability of vocational plans can be disputed to the Director by injured workers and employers; however a vocational rehabilitation provider cannot dispute a vocational determination. The aggrieved party must submit the reasons for the dispute, in

writing, within 15 calendar days of the receipt date of the notification letter. Time limits for accepting a dispute may be extended by the VDRO if good cause is shown.

## **Time Loss During Disputes** [RCW 51.32.090](#), [RCW 51.32.095](#)

Since payment of time loss during vocational disputes is discretionary, the following guidelines shall be followed:

- If the vocational determination finds the injured worker employable, time loss compensation will not be paid while a dispute is being reviewed by the VDRO.
- When the VDRO cannot uphold a finding of employability, retroactive time loss will be paid from the date time loss was ended.
- When the VDRO cannot advise the Director of any decision without requiring the self-insurer to obtain more information and submit a new SIVRF, time loss will be reinstated.

## **Job Modifications** [RCW 51.32.095](#), [RCW 51.32.250](#)

An additional discretionary benefit allows the payment of up to \$5,000 to assist employers in a cooperative effort to modify the injured worker's job site where necessary to return the worker to their job. Job modification is a desirable method of returning the injured worker to gainful employment, regardless of the date of industrial injury. Job modification includes modification of the injured worker's previous job or modification of a new job.

## **Job Modification Reimbursement**

Self-insured employers may submit reimbursement requests for job modification expenses to the department. **Self-insured employers are not entitled to reimbursement for "Pre-Job Accommodation" costs.** Once the funds used for the job modification are spent, the reimbursement request can be made. The professional consultative fee for services is not included in the \$5,000 and therefore, is not reimbursable. The following documents must be submitted when requesting reimbursement:

- Job Modification Assistance Application. The third party administrator of self-insured employer, to whom the reimbursement money will be sent, should be clearly identified on the application.
- Medical information from the attending physician regarding the need for the modification to allow the individual to return to work.
- Completed Ownership Agreement.
- Invoice.

- Proof of payment in the form of a receipt, photocopy of a check, or an invoice stamped paid.

## Preferred Worker Program [RCW 51.32.095\(4\)](#)

The Preferred Worker Program is a service of the Department of Labor and Industries (L&I). It offers financial incentives to employers who offer employment to workers who cannot return to previous employment due to a workplace injury or occupational disease. The new job must be consistent with post-injury work restrictions.

If a self-insured employer hires a preferred worker and she or he is injured or diagnosed with an occupational disease during the preferred worker certification period, L&I will reimburse the costs for that new claim after it has closed.

The self-insured employer will manage the claim for a preferred worker and pay all benefits. When a claim is ready to be closed, the employer will notify L&I's Self-insurance section that the claim was for a preferred worker and request reimbursement for claim costs. Questions can be addressed by contacting the Self-insurance section at 360-902-6901.

Here is an overview of changes to the program, for preferred workers certified on or after January 1, 2016:

- Eligible employers may submit reimbursement requests for wages, clothing, equipment, and tools allowing the worker to return to work at a medically-approved job. The employer can't be reimbursed for clothing, equipment or tools normally provided to employees.
- Confirmation that the work is within the worker's restrictions must be made by both the worker's health care provider and a vocational rehabilitation professional. The final determination will be made by the department's vocational services specialist (VSS).
- Self-insured employers are eligible for the Preferred Worker Program incentives if they hire a worker who is certified as a preferred worker under a State Fund claim.

Questions about the program? Find more information on the [Preferred Worker Program](#) website, or contact the Preferred Worker desk at 1-800-845-2634.

## Catastrophic Injury Benefits [RCW 51.36.020, RCW 51.36.022, WAC 296-23-180, WAC 296-14-6200-6238](#)

Although not necessarily related to vocational rehabilitation services, there are benefits in the event of a "catastrophic injury" to modify a home and/or vehicle.

- The self-insured employer may pay the benefit but any denials must be determined by the Supervisor (Assistant Director for Insurance Services).

- Home modification: An amount not exceeding the state’s average annual wage toward the cost of residence modification or construction at the time of the request. The payment shall only be made for one residence in which the worker resides, and only one residence can be modified or constructed. However more than one payment for any one home is permitted with conditions.
- Vehicle Modification: An amount not exceeding 50 percent of the state’s average annual wage plus an additional \$4,000.00 towards the cost necessary to modify a motor vehicle owned by a worker who has become an amputee or becomes paralyzed because of an industrial injury.

## Requirements for Self-Insurers

### Employability Decision [WAC 296.15.4304](#)

When a self-insurer concludes an injured worker is employable, a [Self-insurance Vocational Reporting Form](#) (SIVRF) is submitted to the department for a formal determination of employability.

As soon as a review of the SIVRF is completed, the supervisor’s designee will make a determination regarding employability and notify the self-insurer and worker.

### Vocational Services [WAC 296-19A-010](#)

If the self-insurer concludes that vocational rehabilitation services are both necessary and likely to enable the injured worker to become employable at gainful employment, then a rehabilitation plan will need to be developed. The self-insured vocational rehabilitation plan will follow the same criteria as the State Fund.

### Plan Development [WAC 296-15-4306](#), [WAC 296-15-4308](#), [WAC 296-15-4310](#), [WAC 196-19A-094](#), [WAC 296-19A-096](#)

#### How can a provider request an extension of time to complete plan development?

- When the plan cannot be completed and submitted to the department within 90 calendar days the vocational rehabilitation provider seeking an extension must submit a written request to the department for state fund claims or the self-insured employer. The vocation rehabilitation provider must continue working on plan development while the department evaluates the extension request.
- The written request for extension must:
  - Explain why there is good cause for an extension, with supporting documentation.

- Specify the number of additional calendar days requested to complete plan development.
- Identify any anticipated barriers to the completion of plan development.

**How will the department determine whether there is good cause to grant an extension of time?**

- The department will determine whether good cause exists on a case-by-case basis.
- An extension will be granted for good cause when there is a significant delay in the plan development process and the cause is beyond the worker’s or vocational rehabilitation provider’s control. Examples of good cause include, but are not limited to:
  - A death in the worker’s immediate family (spouse, domestic partner, child, grandchild, sibling, parent or grandparent).
  - Delays caused by documented changes in the worker’s medical ability to participate in plan development.
  - Information received by the vocational rehabilitation provider that impacts plan development and was not available when assessment services were provided.
  - Documented delay in receipt of requested information from a medical provider relevant to developing the vocational plan.
  - The impact of previously identified barriers to employment and/or retraining.
- Noncooperation by a worker, pursuant to an order issued by the department under [RCW 51.32.110](#) and [WAC 296-14-410](#), is not good cause for granting an extension of time.
- If the department finds there is not good cause for the delay in submitting a vocation plan, the department may take action, including but not limited to:
  - Suspension of further vocational services if the worker has been found noncooperative, until such noncooperative actions cease or have been resolved.
  - Assignment of a new vocational provider.
  - Allowing the vocation rehabilitation provider to complete the referral with monitoring of further plan development services by the department or self-insured employer.

**Plan Implementation** [WAC 296-15-4306](#), [WAC 296-15-4316](#), [WAC 296-15-4318](#)

**When must a self-insurer submit a vocational rehabilitation plan to the department?**

- No later than 90 calendar days after the date the department determined the worker was eligible for vocational plan development services, the employer must submit a [Self-insurance Vocational Reporting Form](#) (SIVRF) and a completed vocational plan for the worker.
- If the plan cannot be completed and submitted to the department within that time period, the self-insurer must, prior to the 90<sup>th</sup> day, submit a SIVRF and the vocational rehabilitation providers request for an extension as required in [WAC 296-19A-094](#).

## **What must the self-insurer do when the worker elects Option 2 benefits?**

When the department approves a rehabilitation plan, the worker will be notified in writing of their right to decline further vocational rehabilitation services and elect Option 2 benefits. When the worker elects Option 2 benefits, the self-insurer must take the following action within 5 working days of receiving the worker's request:

- Terminate time loss benefits with proper notification to the worker as required in [WAC 296-15-420\(9\)](#).
- Establish the total amount of the Option 2 award and a payment schedule for the benefits that begins the date time loss is terminated.
- Submit a SIVRF to the department which must include:
  - The total vocational services costs paid since the date the worker was found eligible for services.
  - The Option 2 election form signed by the worker.
  - Documentation that includes the total amount of the Option 2 award and payment schedule, and
  - Advise the department of the date time loss was terminated.
- Commence payment of Option 2 benefits to the worker according to the established payment schedule. The first payment must be made no later than 15 days after the date time loss is terminated. Option 2 benefits may be paid before the department issues an order.

## **What must the self-insurer do when the worker elects Option 2 benefits and the claim is closed?**

The self-insurer must submit a quarterly report to the department on a form stipulated by the department listing the total retraining costs paid to date for each worker since the Option 2 benefits was granted. These quarterly reports must document all funds expended and funds that remain available for all workers of the employer until each worker has expended the total vocational costs available to him or her, or until 5 years have passed since the benefit was granted.

## **Required Reports**

The self-insurer is required to submit the following reports to the self-insurance section:

- [Self-insurance Vocational Reporting Form \(SIVRF\)](#) – The purpose of the form is to report to the department the employability status of the self-insured worker. The form is used to notify the department of the worker's medical instability, transitional work status, referral to a counselor for an assessment, ability to work based on transferable skills,

eligibility for vocational services, or not likely to benefit from vocational services and the reason(s) why.

All vocational determinations, except return to work or released for work to the job of injury without restrictions, as well as vocational retraining plans must be submitted for review and approval to the department.

A signed and completed SIVRF form must be attached to all reports.

- Rehabilitation Outcome Reporting – This information is to be submitted on all claims, compensable and medical only, where vocational services have been provided and the self-insurer is requesting closure of the claim. The information has been incorporated into the SIF-5 and SIF-2 (for medical only claims).