



STATE OF WASHINGTON
Department of Labor and Industries

Retrospective Rating Program
PO Box 44180 • Olympia, Washington 98504-4180 • Fax (360) 902-4258
www.retro.Lni.wa.gov • retro@Lni.wa.gov

April 8, 2014

Dear Retro Stakeholder,

I am writing to provide you an update on the petitions we received regarding individual enrollment and common ownership rules.

As you may recall, the department received two petitions from the Retro Advisory Committee (RAC), requesting changes to the rules pertaining to individual enrollment and common ownership. In response, the department hosted public stakeholder meetings, conducted personal interviews, and accepted written comments in order to gather customer feedback regarding the proposed rule changes.

We have consolidated the feedback and frequently asked questions (FAQ's) and have summarized them for your review in the attached documents. Additionally, we will be posting to our website the transcripts from the public meetings as well as an unconsolidated version of all feedback. Once this information has been posted to our website, we will send out a notification and link.

After a review of the feedback, the department recognized the need to continue the conversation regarding these two petitions prior to moving forward with formal rule making. As such, the department will be convening two work groups to address the proposed changes contained within each petition. Each work group will include representatives from the Retro community and department staff. The intent of the work groups is to provide a forum that will:

- Provide the opportunity for candid discussions regarding the merits and concerns of proposed rule changes;
- Identify, if appropriate, alternative solutions that adequately address the concerns outlined within the petitions;
- Provide clarification and insight on current department policies and processes; and,
- Determine which proposed rule changes actually require an administrative change compared to a rules change.

The *individual work group* will be led by **Jessica Nau** and the *common ownership work group* will be facilitated by **Julie Osterberg**.

We are still in the process of standing-up the work groups and welcome your involvement. *If you are interested in participating* in either work group, please send us an email via Retro's general inbox (retro@Lni.wa.gov) and state in the *subject line* which work group you would like to participate.

I want to express my sincere thanks for those who have already contributed to this process through the submission of feedback, and comments shared during meetings. Your input matters, and I want to assure you that we take all feedback and suggestions seriously.

Thank you.

Jessica Nau
Assistant Program Manager
Retrospective Rating

Attachment(s)

Individual Rules Feedback Summary

Overview

The Department of Labor and Industries (L&I) received a petition from the Retro Advisory Committee (RAC) proposing the following rule changes related to individual enrollment.

1. Minimum requirement of four years as a Washington employer
2. Increased minimum standard premium
3. Demonstrate an acceptable workplace safety plan
4. Have an acceptable plan for cooperation with the department's claim management
5. Establish probation period for individual enrollment

Below is a summary of feedback grouped by proposed change that was provided to the department through written commentary, personal interviews, and public stakeholder meetings.

General Feedback

In support of the changes

- Stakeholders commented on the need for Retro rules, especially those pertaining to performance expectations, to be consistent between individuals and groups.
- Current rules are viewed as unfair in that individually enrolled participants are not held to the same safety standards as groups.
- There is a general perception that because individuals are not held to the same safety standards as groups, their relative performance compared to groups is too low which may be negatively impacting the overall performance of Retro.
- The intent of the proposed rule change is to see an increase in the commitment to safety which will benefit all of Retro.

Concerns about the proposed changes

- Several comments requested the department to leave the rules pertaining to individual enrollment alone – there is a strong consensus among individual participants that the current rules are not broken.
- Stakeholders commented that the proposed changes will make enrollment criteria for individuals too restrictive and will introduce burdensome administrative requirements – thereby going against current rule which encourages broad participation.
- There is also a general concern that the proposed changes will force some individuals into groups in order to continue Retro participation.

Feedback on the minimum requirement of four years as a Washington employer

In support of the changes

- Supporters commented that a four year minimum will allow individuals to make a more informed decision regarding Retro participation in part because they will have a three year history that is reflective of their safety commitment and performance.

- Additionally, the four year minimum allows for the premium of an individual participant to be “experience rated”; meaning, premiums entering the Retro system from individuals are more credible in that they are more accurately reflecting an individual’s potential risk and therefore risk to Retro as a whole.

Concerns about the proposed changes

- There is a general concern that this proposed rule change will place an undue burden on any company seeking to start business within Washington.
- As Retro is considered to be the most effective safety incentive for most individual participants, there is also a concern that this proposed rule sends a message to new companies that safety is not important for the first four years.

Feedback on an increased minimum standard premium

In support of the changes

- There is a general concern that the current minimum standard premium requirement makes it too difficult for an individual to be successful in Retro, and that the minimum must be raised significantly.
- Additionally, the current minimum places Retro, as a whole, at risk by having to absorb high costs claims from individuals whose premiums do not cover the costs.

Concerns about the proposed changes

- Stakeholders commented that the proposed changes will make enrollment criteria for individuals too restrictive – thereby going against current rule which encourages broad participation.
- There is also a general concern that the proposed changes will force some individuals into groups in order to continue Retro participation.
- Several comments were received requesting the department to research this matter further to determine if a new minimum is needed and, if so, to determine the appropriate increase.

Feedback on an acceptable workplace safety plan

In support of the changes

- Several comments were received noting that although there is an assumption that individually enrolled employers have written workplace safety plans there is a concern that Retro does not have a validation process in place.

Concerns about the proposed changes

- Stakeholders commented that safety rules are already a requirement through DOSH and that further regulation seems redundant and burdensome.
- Additionally, the term ‘an acceptable safety plan’ was commented on as being too vague and requiring further explanation.

Feedback on an acceptable plan for cooperation with the department's claim management

In support of the changes

- There is a general concern that a lack of standards regarding claims management, for individuals and the third party administrators (TPA's) they contract with, may be contributing to lower overall performance of Retro.

Concerns about the proposed changes

- A general consensus among individuals is the belief that there is already an inherent incentive for individuals to manage claims, more so than groups, because an assessment is more acutely felt by an individual than a group.
- Additionally, there is a concern that implementing this regulation will be redundant and burdensome.

Feedback on establishing a probation period for individual enrollment

In support of the changes

- Comments were received stating that the rules for individuals regarding a probation period should be consistent with those of groups.

Concerns about the proposed changes

- Comments were received questioning that if the current policy yields positive retro returns then why expend additional resources to try to fix something that isn't broken.

Next Steps

Based on stakeholder feedback received by the department, we have decided not to proceed with rule changes at this time. However, the department will be convening a workgroup comprised of members of the Retro community, representing individuals and groups, as well as department staff, to determine the best way to proceed with the proposed rule changes for individual enrollment.

Individual Retro Requirements – Frequently Asked Questions (FAQ's)

The Department of Labor and Industries (L&I) received a petition from the Retro Advisory Committee (RAC) proposing the following rule changes related to individual enrollment:

1. Minimum requirement of four years as a Washington employer
2. Increased minimum standard premium
3. Demonstrate an acceptable workplace safety plan
4. Have an acceptable plan for cooperation with the department's claim management
5. Establish probation period for individual enrollment

Below is a summary of questions grouped by proposed change provided to the department through written commentary, personal interviews, and public stakeholder meetings.

General FAQ's

Q: What is the Retro Advisory Committee (RAC)?

A: The purpose of the Retro Advisory Committee is to provide input to L&I in the policy rules applicable to Retrospective Rating administration and procedures for effectively operating the Retro program. The committee operates in an advisory capacity only. Suggestions or actions of this committee are intended to keep the director of L&I informed as to the possible effects the Retrospective Rating policies will have on business. The RAC bylaws allow composition of the committee to include owners or employees of firms that are enrolled individually in the Retrospective Rating program, employees of trade associations enrolled in the Retrospective Rating program, and one non-voting member who is an employee of L&I. More information about the Retro Advisory Committee can be found on our website at:
<http://www.lni.wa.gov/ClaimsIns/Insurance/Reduce/Qualify/AdvComm/default.asp>

Q: How many petitions were submitted by the Retro Advisory Committee (RAC)?

A: Two petitions for rulemaking were received from members of the RAC. One petition requests revision to the current rules for participants enrolled individually in Retro. The other addresses Retro enrollment requirements for businesses under common majority ownership.

Q: How many petitions were submitted by the Department of Labor and Industries (L&I)?

A: The department submitted one petition to modify the retro adjustment calculations and the factors used within the calculations.

Minimum requirement of four years as Washington employer – WAC-17B-100

Q: What will the impact be of this proposal?

A: Verifying dates for account activation and initial premium reporting to L&I will add additional time to the quarterly enrollment process.

Q: Will this apply to members in a group?

A: L&I will universally apply this requirement to employers entering groups as well as to employers enrolling individually.

Q: How will the department manage succession of accounts (especially between family members)?

A: The department will have to research the different options on succession of accounts if this rule were to be implemented. This process will be discussed in more detail as part of the individual work group.

Q: Will there be grandfathering for people currently enrolled in Retro?

A: Yes, employers enrolled in Retro prior to the effective date of these rules will not be subject to this requirement.

Increased minimum standard premium – WAC 296-17B-100(b)**Q: What is the current minimum standard premium for employers to enroll individually?**

A: The minimum standard premium is \$5,900.00 for 2014.

Q: What will the impact be of this proposal?

A: Implementing this proposal will require additional resources, including system modifications and staff. Implementation will also add additional time to the quarterly enrollment process.

Q: Will there be grandfathering for people currently enrolled in Retro?

A: Yes, employers enrolled in Retro prior to the effective date of these rules will not be subject to this requirement.

Demonstrate an acceptable workplace Safety Plan – WAC 296-17B-100**Q: What will the impact be of this proposal?**

A: Requiring employers to demonstrate an acceptable workplace safety and accident prevention program for retro enrollment creates additional work, and may lead to confusion and duplication of efforts; as the standards for retro enrollment may not be consistent with the standards enforced by the Division of Occupational Safety and Health (DOSH).

Q: What is an acceptable safety plan and who decides what is acceptable?

A: The department and the Retro community will have to develop criteria regarding what constitutes demonstration of an acceptable workplace safety and accident prevention plan. This process will be discussed in more detail as part of the individual work group.

Q: Will there be grandfathering for people currently enrolled in Retro?

A: No, all current and future participants will be required to submit a safety plan at the time of retro enrollment or re-enrollment.

Have an acceptable plan for claim management – WAC 296-17B-100**Q: How many people will be affected by this proposal?**

A: This requirement will apply to all individually enrolled employers, and any additional employers applying for individual enrolment in the future.

Q: What will constitute as an acceptable plan for claim management?

A: Retro will have to develop criteria regarding what constitutes an acceptable plan for cooperation with the L&I's claims management activities for individually enrolled employers. This process will be discussed in more detail as part of the individual work group.

Q: Will there be grandfathering for people currently enrolled in retro?

A: No, all current and future participants will be required to submit an acceptable plan for claim management at the time of retro enrollment or re-enrollment.

Establish probation period for Individual enrollment – WAC 296-17B-730

Q: Will there be grandfathering for people currently enrolled in retro?

A: The department will have to research the different options on grandfathering if the probation period rule change were to be implemented. This process will be discussed in more detail as part of the individual workgroup.

Q: What are the next steps?

A: Based on stakeholder feedback received by the department, we have decided not to proceed with rule changes at this time. However, the department will be convening a workgroup comprised of members of the Retro community, representing individuals and groups as well as department staff to determine the best way to proceed with the proposed rule changes for individual enrollment.

Common Ownership Feedback Summary

Overview

The Department of Labor and Industries (L&I) received a petition from the Retro Advisory Committee (RAC) proposing rule changes related to common ownership. A summary of the petition's proposed rule changes is provided below:

1. Common ownership
2. Prohibited conduct

Below is a summary of feedback that was provided to the department through written commentary, personal interviews, and public stakeholder meetings.

In support of the changes

- Stakeholders stated that the requirement of all commonly owned firms to be enrolled in the same industry category (current rule), regardless of their safety practices, has a negative impact on refunds.
- Stakeholders also expressed support of the proposal and that the proposed changes to the prohibited conduct included adequate punishment and would deter firms from manipulation of premium and hours.
- Comments received also expressed support of the proposed rule because it allows the group more control to remove firms that are not as safe as others or that are not adhering to group requirements.
- Other comments supported the proposed change because the "all-or-nothing rule" is too restrictive and the new rule allows for more discretion and flexibility regarding the enrollment of employers.

Concerns about the proposed changes

- The department received several requests to leave the rules as is – the current rule isn't burdensome in its current state and the "all-or-nothing rule" is less risky.
- Concern was raised that hiding losses is occurring under the current "all-or-nothing rule", and adequate resources need to be in place before changing the rule to ensure appropriate monitoring and enforcement.
- Comments were received stating that rule-making may not be the best course at this time, but instead a workgroup should be created to discuss issues further.
- Comments were received in support of the proposed rule, but that owner optional coverage could be an issue and should be addressed.

Concerns or comments related to department processing of accounts

- There were multiple comments and concerns raised that suggest that the Retro community is unclear about L&I administrative processes related to assignment of common ownership and sub-accounts. In addition, concern was expressed about inconsistencies and errors in those processes.

Next Steps

Based on stakeholder feedback received by the department, we have decided not to proceed with rule changes at this time. However, the department will be convening a workgroup comprised of members of the Retro community, representing individuals and groups as well as department staff, to determine the best way to proceed with the proposed rule changes for individual enrollment.

Common Ownership – Frequently Asked Questions (FAQ's)

Overview

The Department of Labor and Industries (L&I) received a petition from the Retro Advisory Committee (RAC) proposing rule changes related to common ownership. A summary of the petition's proposed rule changes is provided below:

1. Common ownership
2. Prohibited conduct

Below is a summary of questions that was provided to the department through written commentary, personal interviews, and public stakeholder meetings.

General FAQ's

Q: What is the Retro Advisory Committee (RAC)?

A: The purpose of the Retro Advisory Committee is to provide input to L&I in the policy rules applicable to Retrospective Rating administration and procedures for effectively operating the Retro program. The committee operates in an advisory capacity only. Suggestions or actions of this committee are intended to keep the director of L&I informed as to the possible effects the Retrospective Rating policies will have on business. The RAC bylaws allow composition of the committee to include owners or employees of firms that are enrolled individually in the Retrospective Rating program, employees of trade associations enrolled in the Retrospective Rating program, and one non-voting member who is an employee of L&I. More information about the Retro Advisory Committee can be found on our website at:

<http://www.Lni.wa.gov/ClaimsIns/Insurance/Reduce/Qualify/AdvComm/default.asp>

Q: How many petitions were submitted by the Retro Advisory Committee (RAC)?

A: Two petitions for rulemaking were received from members of the RAC. One petition requests revision to the current rules for participants enrolled individually in Retro. The other addresses Retro enrollment requirements for businesses under common majority ownership.

Q: How many petitions were submitted by the Department of Labor and Industries (L&I)?

A: The department submitted one petition to modify the retro adjustment calculations and the factors used within the calculations.

Common ownership petition FAQ's

Q: What are some of the concerns the department has about the proposed changes to common ownership?

A: The current rule protects against an employer reporting hours worked in an account enrolled in Retro, but reporting claims in a sub-account not enrolled in Retro. Implementing the proposed rule changes may potentially result in employers earning refunds because all pertinent claims are not being accounted for in the overall retro rating calculation. This manipulation of the calculation may also affect the disparity between Retro and non-Retro performance; impacting the overall amount of retro return.

In addition, L&I under current rule, is proactive in identifying which sub-accounts are acceptable to enroll, and implementation of the proposed change will shift responsibility of identification of such accounts to the group or the individually enrolled account in Retro.

Q: If the current rules are protecting against fraud and dishonesty, why change things?

A: The current rule requires all employers that are commonly owned and within the same industry category to enroll in Retro. It is true that this requirement is one protection against an employer reporting hours in an enrolled account in Retro, while reporting claims in a sub-account not enrolled in Retro. However, the department is open to considering other methods of audit or protections that could be put in place other than the requirement to enroll all accounts.

Q: There seems to be inconsistent application of common ownership by the department. How does L&I determine if a new account or sub-account is commonly owned?

A: The process for determining common ownership is governed by WAC 296-17-873 through WAC 296-17-87306. This process will be discussed in more detail as part of the common ownership work group.

Q: What is owner optional coverage?

A: If you are a sole proprietor, partner, corporate officer, or member of a limited liability company, you may not be required to have industrial insurance coverage as provided in RCW 51.12.020. In these instances, you can still obtain workers' compensation coverage from the department. We refer to this as "optional coverage" since, as the owner/officer, you are not required to have this insurance.

Because owner insurance coverage is optional, you must meet certain conditions and requirements which are detailed within WAC 296-17-31007.

Q: Is the department aware of concerns regarding owner optional coverage and abuse?

A: Yes, the department is aware of concerns regarding abuse of owner optional coverage. The concerns are that owner coverage as defined in WAC 296-17-31007 allows the owner to elect coverage, and subsequently file a claim before paying any premium. The owner is unlikely to protest his or her own claim, and not participate in other programs based on transferrable skills, light-duty, etc. This concern was raised during public meetings, as well as during other discussions between department staff and Retro community members, and the department is committed to reviewing this process.

Q: What are the next steps?

A: Based on stakeholder feedback received by the department, we have decided not to proceed with rule changes at this time. However, the department will be convening a workgroup comprised of members of the Retro community, representing individuals and groups as well as department staff, to determine the best way to proceed with the proposed rule changes for individual enrollment.