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Washington Workers' Compensation Review is provided by Employer Resources Northwest to inform Washington State Employers of updates in Workers' Compensation policies, guidelines and law. Being an informed Washington State Employer will lead to a safer work environment and a reduction in workers' compensation costs and premium. Log onto [www.ernwest.com](http://www.ernwest.com) for more information, and watch for the next issue of Washington Workers' Compensation Review in your mailbox.

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Employers since 1996.**



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# Employer Resources Northwest

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## L&I News Briefs

### Workers' compensation benefits to increase 5.445 percent

Workers currently receiving Washington workers' compensation wage-replacement or pension benefits received a 5.445% cost-of-living increase effective July 1, 2007. State law requires that benefits be recalculated each year.

### L&I Rate Holiday

Beginning July 1, and over the next six months, employers must deduct less from their employees' paychecks for workers' compensation premiums. How much an employer and worker will save depends on their industry and the frequency and cost of injury claims. For example, a construction worker who frames houses will save, on average, \$440 in premiums over the next six months. His or her employer will save that amount multiplied by the number of framers employed full time.

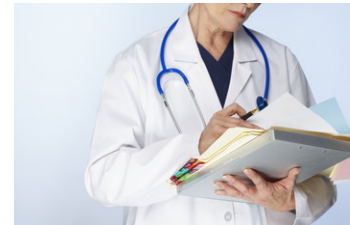
### L&I continues effort to protect workers from heat-related illness

With summer months here and outdoor temperatures rising, employers need to take precautions to prevent heat-related illness for anyone working outdoors in hot weather, the Department of Labor and Industries (L&I) said today. For the second summer in a row, L&I is adopting an emergency rule to protect outdoor workers from heat-related illness.

For more information on the above stories log onto [www.lni.wa.gov/News](http://www.lni.wa.gov/News).

## The Benefits of Offering Light Duty Work

Some time ago a group of occupational medicine doctors were surveyed to determine how much of the time off work that they certify is directly related to the objective medical conditions of an industrial injury. The surprising response was that only 10% of time off certified could be objectively related back to the industrial injury.



This survey combined with experience handling those long and ugly claims tells us that the majority of time employees miss is because of secondary gain issues. Secondary gain means there are reasons other than the primary reason described by the employee, in this case an on the job injury, for them not to return to work.

Some common types of secondary gain issues revolve around:

- ✦ Financial hardship
- ✦ Drug use
- ✦ Poor job performance
- ✦ Job dissatisfaction
- ✦ Poor relations at work with coworkers and/or supervisors

An example of this would be:

*Marvin, a single dad working two jobs to afford day care for his three kids. During his part-time job working as a Certified Nursing Assistant (CNA) he injures his back and is taken off of work for six weeks. During the six weeks he is off work his back pain improves 80%, but he's not had to pay for child care because he is home all day, and he is receiving 66% of his regular pay from both his jobs. Marvin is not making as much money as he did at work, but is saving \$1,000 per month because he does not have to pay for child care. He is better off financially not working than he would be if he tried to return to work. He realizes this subconsciously and his back condition begins to slowly degrade so he can't return to either of his two jobs.*

In this example the injured employee is not motivated to return to work because he is being paid not to work (time loss) and is saving a large amount of month-to-month living expenses by staying home. He is being psychologically conditioned not to return to work. Oddly enough, the Washington State Department of Labor and Industries (L&I) spends millions of dollars each year on the medical treatment of workers' compensation claims, but they do nothing to counter the strong secondary gain issues. Essentially, the millions of dollars spent on medical treatment is only treating 10% of the reason that employees remain off work.

The single most potent weapon you have to combat secondary gain is the ability to provide work. If an employer offers work to an injured employee that has been approved by the worker's doctor, the worker has no choice but to accept the offer, or their time loss benefits will likely be stopped, and the secondary gain greatly reduced or eliminated.

## Safety and Health: *L&I Changes Reporting Procedures*

L&I recently changed the process by which employers are notified that a workers' compensation claim has been filed by an employee. In the past, L&I used a three part, multi-colored Report of Accident; a portion was to be completed by the injured worker, the medical provider and the employer. Whenever a medical provider initially treated your injured worker, the medical provider would mail the Report of Accident to you, so the Employer's portion could be completed.



L&I revised the Report of Accident form to include only a portion for the injured worker and medical provider, so the revised form no longer includes an **employer portion**. In addition, the medical provider no longer mails the Report of Accident to you.

***The Revised Report of Accident no longer includes an employer portion.***

ERNWest is notified that a claim has been received by L&I via a letter that includes a print out of the data submitted by the worker and physician on the initial Report of Accident and a blank Employer's Portion on the last page. In order to insure you the opportunity to complete the Employer's Portion, ERNWest will be sending you this Claim Arrival notification.

Due to the above change, it is extremely important to remind your employees to report all incidents that occur on the job, whether they involve a medical visit or not, within 48 hours of their occurrence.



### **Legal Corner: A "New" Kept on Salary Pitfall**

One way to lower claim costs is to continue to pay an injured worker their regular wages in lieu of the injured worker receiving time loss benefits from the Department of Labor and Industries (L&I). The acronym used is KOS (Kept on Salary).

"KOSing" has been used for years by employers to effectively control their workers' compensation premium rates. Until recently an employer was able to pay 95% of the injured worker's wage at the time of injury and still keep time loss from being paid. Unfortunately several L&I employees have reinterpreted the law by stating if an employer does not pay 100% of the injured worker's wages they will pay full time loss.

ERNWest is currently addressing this "change" at L&I because we believe that it is legal to pay 95% of an injured worker's wage to avoid time loss being paid. No matter how one looks at this it is a "win-win" for the employer and worker. The employer keeps their rates lower, the employee has less premium deducted from their pay check and the employee gets 95% of their wage rather than 60% - 75% of their wage.

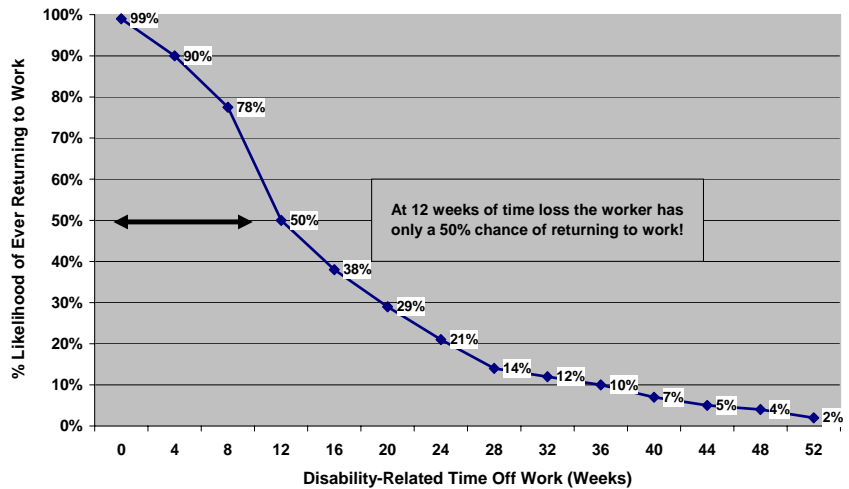
Although it seems unreasonable, if you fail to pay the injured employee the wages he or she was earning at the time of injury, L&I will pay time loss benefits without regard to any money previously received by the worker in the form of KOS. For example, if an employer chooses to pay the injured employee 95% of their wages, L&I will still pay full time loss and the employer will be left to try and collect the previously paid KOS back from the injured worker.

KOS can be a powerful claims management tool, as long as you are able to pay the injured employee's full wages, otherwise, L&I will pay time loss and you will be responsible for recouping your money from the injured employee.

## Claim Tip: Return to Work

It is extremely important for employers to offer their injured employees light or modified duty. As demonstrated in the graph to the right, the likelihood of returning an injured employee to any form of employment steadily decreases over the first year of the claim. The information in this graph comes from The Journal of Workers Compensation and shows that if one is off work for just four weeks the chances that they will return to sustained employment ever again drops to about 90%, at eight weeks 75% and at twelve weeks 50%. Please consult your ERNWest Claims Manager for return to work assistance.

Likelihood of EVER Returning to Any Employment Following Disability-Related Time Off Work



## FREE Workers' Compensation Seminar: October 2007

ERNWest is offering Washington State Employers a FREE seminar on successfully controlling and lowering Labor & Industries costs. **Watch for your invitation in the mail!**

- Identify what drives your company's L&I costs
- Learn how to control those costs
- Target ways to save money now

For more information contact Heather Johnson at (800) 433-7601 ext. 17 or [hjohnson@ernwest.com](mailto:hjohnson@ernwest.com).

**Employer Resources Northwest (ERNWest)** is a complete workers' compensation risk management provider based in Washington State, working for Washington State employers. The staff has extensive experience and expertise working with the smallest company up to large Washington State trade associations. Our services include retrospective rating program administration for groups and individual companies, claims management, loss control/safety, retro group marketing/sales, risk management consulting and legal counsel. Some of the retrospective rating groups we manage are listed below. We also work with many companies one-on-one. **Please contact Heather Johnson at 800.433.7601 ext. 17 or [hjohnson@ernwest.com](mailto:hjohnson@ernwest.com) if you have any questions about ERNWest's services.**

