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NO. 58878-8-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

IVAN FERENČAK,

Appellant,

v.

DEPARTMENT OF LABOR & INDUSTRIES and ,
BOARD OF INDUSTRIAL INSURANCE APPEALS,
INTERVENOR,

Respondents.

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

This reply attempts to cover the analysis and new cases included in Respondents' briefing insofar as that can be done in 25 pages.

II. OTHER APPEALS AT DIVISION I WITH RELATED ISSUES.

These appeals are now before Division I with related issues:

Kustura v. Dep't of Labor & Industries, No. 5744-5-1-I

Lukić v. Dep't of Labor & Industries, No. 57446-9-I

Memišević v. Dep't of Labor & Industries, No. 57447-7-I

Meštrovac v. Dep't of Labor & Industries, No. 58200-3-I

Resulović v. Dep't of Labor & Industries, No. 59614-1-I

Mašić v. Dep't of Labor & Industries, No. 60139-3-I

All involve language accommodation for LEP workers. The first four involve wage issues. Board appeals were found untimely in *Lukić*, *Memišević*, *Resulović*, and *Mašić*, where each offered undisputed evidence their appeals were filed within 60 days of orders being first translated to them.¹ The Department stipulated and the Board found Mr. Ferencák's appeal timely as filed within 60 days of first translation of orders, including one issued seven months before. The unpredictability of these Board results and the years of litigation forced upon these LEP workers demand resolution to ensure consistent treatment in the future.

¹ Evidence was provided in *Lukić* and *Memišević* before and in *Resulović* and *Mašić* after the *Ferencák* ruling. Mr. Mašić filed his appeal of an English-only order within 70 days of its issuance and 60 days of actual receipt, but his appeal was found untimely despite being filed sooner than Mr. Ferencák's timely appeal was.

III. ARGUMENT

A. PUBLIC POLICY MANDATES LANGUAGE ACCOMMODATION BE PROVIDED TO ENSURE EQUAL ACCESS TO JUSTICE.

1. Equal Access to Justice Requires Language Accommodation.

“Equal access to justice” is Washington State policy recognized by the Supreme Court,² the Office of the Administrator of the Courts,³ and the Bar Association.⁴ These, as well, as the Department interpreter services policies,⁵ are properly before the Court as legislative facts.⁶ Equal access to justice is the correct policy, consistent with our state’s frequent statements of public policy against discrimination based on national origin in RCW 59.60 and language disabilities in RCW 2.43 and RCW 2.42. The relief requested by Mr. Ferencák is entirely consistent with this policy. Nevertheless, the Department and the Board advance theories diametrically opposed to this policy, effectively institutionalizing discrimination based on national origin in Industrial Insurance claims handling, Board and further appeals.

² *Washington State Civil Legal Needs Study*, (2003), [*Civil Needs Study*], available on <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>.

³ *Washington State Court Interpreter Services Limited English Proficiency Plan*, 2007, [*WA LEP Plan*], available through Administrative Office of the Courts, APPENDIX 1.

⁴ *Ensuring Equal Access for People with Disabilities: A guide for Washington Courts*, August 2006, available on line at www.wsba.org/atj [*Equal Access Report*].

⁵ PB 99-09, PB 03-01, PB 05-04, Appendix D to opening brief and Management Update appended by Department’s answer to NJP Amicus Brief in *Kustura*, APPENDIX 2 here.

⁶ *Wyman v. Wallace*, 94 Wn.2d 99, 102-103, 615 P.2d 452 (1980); *Houser v. State*, 85 Wn.2d 803, 807, 540 P.2d 412 (1975); *Rogstad v. Rogstad*, 74 Wn.2d 736, 741, 446 P.2d 340 (1968).

2. Equal Access to Justice Requires Counsel for LEP Persons.

“Access to the courts is a fundamental right, preservative of all other rights.”⁷ “Access to the legal system is both a fundamental right and a practical necessity . . . The need to eliminate barriers preventing access to our courts is both real and immediate.”⁸ Representation by counsel is an integral part of access to the justice system, especially for those with a language barrier. Because he is LEP,⁹ Mr. Ferenčak needed legal representation unfettered by the language barrier to protect his rights.

Because accessing justice is difficult for LEP persons, the OAC adopted the **Washington State LEP Plan**, reviewing the multiple state and federal mandates that Courts and administrative agencies provide free interpreters for Washington’s growing LEP population at 6-7. On page 12, the *Equal Access Report* points out that WLAD, requiring accommodation for language barriers, covers all Washington courts, administrative agencies, and government services. Neither Respondent denies Washington’s Industrial Insurance program is federally-assisted or required to free language assistance to LEP persons.¹⁰

⁷ *Equal Access Report*, page 3.

⁸ *Equal Access Report*, page 1.

⁹ The *Equal Access Report* explains at page 16 that people with communication problems “may feel especially intimidated by court proceedings.” This is just as true for those unable to communicate because of LEP status as for those with speech and hearing defects. WLAD forbids discrimination based on disability and national origin.

¹⁰ *Executive Order 13166* (2000); Department of Labor *Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance*

3. Guidance Is Needed for Uniform & Timely Results under the Act.

Washington adopted its Industrial Insurance Act to rescue injured workers from “a horror of lawyers and judicial trials” to provide fair, “sure and certain relief” and avoiding “months or years of delay.” *Stertz v. Ind'l Ins. Com'n*, 91 Wash. 588, 591, 158 P.2d 256 (1916). To avoid the years of delay experienced by these LEP workers and to ensure uniform and predictable results, this Court should address the impact of their LEP status on all issues comprehensively so other LEP workers do not endure such years of delay, litigation, and discrimination.

B. RIGHTS TO LANGUAGE ACCOMMODATION WERE VIOLATED.

1. Interpreter Rights under Title RCW 2 were Violated.

a. RCW 2.43 Requires Interpreters in “Legal Proceedings.”

Respondents’ claim that RCW 2.43 creates no right to an interpreter contradicts the plain language of the statute. RCW 2.43.030(1)(c) unequivocally requires an interpreter be appointed in every “legal proceeding” involving an LEP person, stating:

[W]hen a non-English-speaking person is involved in a legal proceeding, the appointing authority **shall** appoint a qualified interpreter. [Emphasis added]

Recipients, [DOL LEP Guidance], Fed.Reg. 68:103 pp. 32289-32305 (2003); Department of Justice, *Memorandum Regarding Executive Order 13166, [DOJ LEP Guidance]*, 65 Fed. Reg. 50121 (October 16, 2001).

RCW 2.43.030(1)(b) requires appointment of a certified or qualified interpreter if an LEP person is a party to or is compelled to appear in a legal proceeding. RCW 2.43.030 has no provision authorizing a state agency not to appoint an interpreter for an LEP person in a legal proceeding. The court must give effect to the “plain meaning” of a statute “as an expression of legislative intent.” *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1010 (2007). When any LEP person is involved in any “legal proceeding” under RCW 2.43.020(3), the state agency *must* appoint a certified or qualified interpreter to assist the LEP person.

Respondents’ construction ignores the context of the statute. “Plain meaning is discerned from viewing the words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole.” *Burns v. City of Seattle*, 164 P.3d 475, 481 (August 2, 2007). RCW 2.43.010 states the legislature’s purpose -- to “provide for the *use* and procedure for the appointment of such interpreters.” (Emphasis added). Under Respondents’ construction, the statute regulates only procedures for appointing interpreters not when interpreters must be **used**. This view renders the term “use” meaningless and should be rejected. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

The statute's declaration of legislative intent is to "secure the rights, constitutional *or otherwise*" of LEP persons "who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them." RCW 2.43.010 (Emphasis added). The Respondents argue interpreters are only required where constitutional law requires, limiting interpreters severely -- primarily to criminal cases. This argument ignores the stated intent to protect fully **all** LEP persons' rights with qualified interpreters. The Department's construction also makes meaningless RCW 2.43.060's limited waiver and RCW 2.43.020(3)'s expansive definition of "legal proceeding."¹¹

RCW 2.43's statement of legislative purpose, broad definition of "legal proceeding," and strict limits on waiver all underscore that the plain meaning of RCW 2.43.030 is to create a right to an interpreter for any LEP person involved in any legal proceeding in Washington.

b. Properly Construed, RCW 2.43 Covers Department Proceedings.

Whether the Department conducts "legal proceedings" determines workers' interpreter rights even under its own reading of RCW 2.43. Statements under oath to a government agency are "testimonial" and made

¹¹ If, as the Department contends, RCW 2.43 provides for no broader appointment of interpreters than already constitutionally required, there would be no reason for the Legislature to adopt RCW 2.43 or to provide for a limited waiver as constitutional law on waiver is well-developed. The broad "legal proceeding" definition does nothing if it has no effect on when interpreters must be provided.

as part of a legal proceeding. *State v. Smith*, 97 Wn.2d 856, 651 P.2d 207 (1982); *Davis v. Washington*, 541 U.S. ___, 165 L.Ed.2d 224, 126 S.Ct. 2266 (2006). These cases held statements made under oath to investigating government agencies are “testimonial” and thus admissible in later trials as statements made in “other proceedings” of the types of legal proceedings listed in ER 801(d)(i). The Legislature intended no narrower definition in RCW 2.43 where an agency “proceeding” encompasses the Department’s investigation of worker injuries and adjudication of benefits based on worker statements made under oath.

c. The Department Initiates Proceedings.

The Department initiates its statutorily-required investigation¹² into an injury by providing a Report of Industrial Injury form on which the worker must provide information subject to civil and criminal penalty. For time loss benefits, the worker must provide data on a Department Time Loss Certification form also subject to the same penalties. While on time loss, the worker must periodically provide more information again under the same penalty on the Department Worker Verification Form. See

¹² The Department investigates work place injuries so it can, as required by statute: report on fraud [RCW 43.22.331]; issue WSHA citations [RCW 49.17.130]; charge civil or criminal WISHA violations [RCW 49.17.180 or RCW 49.17.190]; act on claims [RCW 51.28.030]; charge false reporting [RCW 51.48.020]; charge retaliation [RCW 51.48.025]; penalize rule violations [RCW 51.48.080]; penalize self-insured employers [RCW 51.48.017]; penalize employers for failing to cover workers [RCW 51.48.105]; penalize workers [RCW 51.48.250 & .260]; order workers to reimburse money and pay interest [RCW 51.48.250 & .260]; or refer workers for criminal prosecution [RCW 51.48.270, RCW 9A.56, and/or RCW 9A.72].

Appendices 3, 4, & 5.¹³ Potential worker consequences include Class C felony conviction, 5 years' imprisonment, \$10,000 fine under RCW 9A.72.030, and civil liability and penalties under RCW 51.48. Despite its claim to the contrary, under *Smith* and *Davis, supra*, the Department's claim investigation is a "legal proceeding."

d. The Board Handles Appellate, Not Initial, Legal Proceedings.

Respondents recognize the Board handles legal proceedings, but assert RCW 2.43 does not apply because the worker "initiated" those proceedings. It is well known that appellate proceedings do not start *ab initio*, they begin with the legal proceedings from which the appeal is taken – from the Department legal proceedings. The record shows the Board initiated proceedings some time after filing, after issuing orders¹⁴ giving the Department extra time to act before granting the appeals.¹⁵

e. Who Initiated Proceedings is Meaningless.

The Court in *State v. Marintorres*, 93 Wn.App. 442, 969 P.2d 501 (1999) found that distinctions between RCW 2.43 and RCW 2.42 violate equal protection as there is no rational basis to distinguish between persons with a language barrier from speech/hearing defect or LEP status.

¹³ None of these forms is available in Bosnian, necessitating interpreter services for a Bosnian fluent worker to provide the information under oath the Department requires.

¹⁴ See *e.g.* CBRA 631, 648, 746, 747.

¹⁵ See CBRA 232- 233 showing November 2005: appeal notices filed, December 2005: Board issues multiple orders giving Department ten extra days to act, later: Board orders granting appeals so proceedings can be held. See *e.g.* CBRA 649, 666, 681.

In RCW 2.43 and RCW 2.42, *Marintorres* observed that the Legislature:

intended the same beneficial assistance for persons who could not communicate effectively in English due to non-English speaking background as for those with speech or hearing defects.

Thus, LEP persons are entitled to interpreters when required by RCW 2.42.120(1) mandating interpreters even at any stage of a “quasi-judicial proceeding,” including agency investigations, whether the person is a witness, suspect or victim.¹⁶ Department action is at least “quasi-judicial” in determining worker’s benefits.¹⁷ Claim “adjudicators” issue “final and interlocutory orders,” make “judgments” and “decisions” on claims.”¹⁸

Thus interpreters are required at all phases of Department claims handling.

¹⁶ RCW 2.42.120 (4) states: “If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. . . . No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.” The Department is Washington’s enforcement agency for the Industrial Insurance Act, the Crime Victim’s Compensation Act, and WISHA.

¹⁷ See *Davidson v. Thomas*, 55 Wn.App. 794, 780 P.2d 910 (1989); *Pentagram Corp. v. Seattle*, 28 Wn.App. 219, 622 P.2d 892 (1981); *Northlake Marine Works v. Seattle*, 134 Wn.App. 272, 127 P.3d 726 (2006). Due to the Department’s quasi-judicial functions and expertise, the Court accords weight, but does not defer completely, to its interpretation of the Act. *Cobra Roofing v. DLI*, 122 Wn.App. 402, 409, 97 P.3d 17, rev. granted 154 Wn2d 1001, 113 P.3d 481 (2004), *aff’d on other grounds* 157 Wn.2d 90, 135 P.3d 913 (2006); *Roller v. DLI*, 128 Wn.App. 922, 117 P.3d 385 (2006).

¹⁸ Victoria Kennedy, Department designee, testified “worker’s compensation adjudicators” decide if claims are allowed or disallowed, if benefits requested by worker or physician are provided, the amount of and if wage replacement benefits are paid based on information from worker, physician and employer. MRP 12/11, 42-5. She testified the Department must communicate with the worker and has translator services to do so. *Memišević* RP 12/11, 36-7. Its goal is “to communicate critical decisions” in a way “that the worker can understand.” *Ibid* at 41.

2. Failure to Accommodate the Language Barrier Constitutes Forbidden Discrimination Based on National Origin.

Board and Department policies failed to ease the language barrier for Mr. Ferencák treating him less favorably than EP workers, thus discriminating against him based on his national origin. This violates RCW 59.60 and 42 USC § 2000d¹⁹ which forbid such discrimination in public facilities and federally assisted programs like Industrial Insurance.

3. The Proper Remedies are Reimbursement & New Board Hearing.

The only proper remedy is to reimburse Mr. Ferencák's interpreter costs incurred throughout his open claim and require any new hearing afford interpreter benefits both to prepare for and at hearing, including for confidential attorney-client communications during hearings.

C. MR. FERENČAK'S RIGHT TO RETAINED COUNSEL WAS VIOLATED.

1. Mr. Ferencák Never Requested Appointed Counsel.

Mr. Ferencák never requested counsel be appointed for him at Department or Board expense, as suggested by Respondents' reliance on *In re Dependency of Grove*, 127 Wn.2d 221, 897 P.2d 1252 (1995). He asserts his right to representation by retained counsel to the same extent as EP workers. Mr. Ferencák requested but was denied language assistance needed for representation by retained counsel. His request was based on

¹⁹ In *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), the United States Supreme Court held unanimously that discrimination based on inability to speak English is forbidden under Title VI as discrimination based on national origin.

the Act's intent to minimize his economic cost arising from his injury, the Department's pattern of supplying and paying for interpreter services as benefits under the Act, and authorities discussed elsewhere.

2. The Act, Board, & Department Recognize the Right to Counsel.

The Act recognizes worker representation by retained counsel.²⁰

The Supreme Court lauded the vital role of counsel to obtain justice for workers in *Brand v. DLI*, 139 Wn.2d 659, 667, 989 P.2d 1111 (1999).

The *Worker's Guide to Industrial Insurance Benefits* recognizes the right to representation by counsel "of the injured worker's choosing" after the Department issues any order on the claim.²¹ This right continues until all appeals are finalized. With the first Department order in April 2002, Mr. Ferencák had the right to retained counsel. CBRA 262. Seven months later, he exercised that right, requesting that Bosnian be used for him and English for his lawyer. CBRA 680. WAC 263-12-020(1)(a) states "Any party ... may appear ... by an attorney ... of the party's choosing." In November 2002, asserting underpaid benefits, Mr. Ferencák filed a notice of appeal complying with WAC 263-12-050(1)(a), invoking his Board

²⁰ RCW 51.52.095(1), RCW 51.52.104 ¶ 1, RCW 51.52.106, RCW 51.52.120, RCW 51.52.130, RCW 51.52.132, RCW 51.52.135(1), & RCW 51.52.150.

²¹ At p. 18-19, APPENDIX 3, available at <http://InjuredWorker.LNI.wa.gov> in English, at [http://www.lni.wa.gov/IPUB/242-104-111\(Russian\).pdf](http://www.lni.wa.gov/IPUB/242-104-111(Russian).pdf) in Russian, at [http://www.lni.wa.gov/IPUB/242-104-222\(Vietnamese\).pdf](http://www.lni.wa.gov/IPUB/242-104-222(Vietnamese).pdf), in Vietnamese, and at <http://www.lni.wa.gov/IPUB/242-104-999.pdf> in Spanish, but not available in Bosnian and cognizable by this court as legislative fact, *supra*.

right to counsel. CBRA 699-704. RCW 34.05.048(2) recognizes the right **to be advised** by retained counsel in any agency proceeding with a right to appeal either before or after the agency decision. RCW 34.05.010(1).

To the extent Respondents assert Mr. Ferencák had no right to counsel at Department or Board levels, they are incorrect. To so rule would do serious damage to the “grand compromise” upon which both benefits under the Act and Washington’s employer immunity are based.

3. The Department Interferes with the Right to Counsel.

Before he appealed to the Board, the Department sent 18 English-only orders to Mr. Ferencák. CBRA 230-2. Department interpreter services policies consistently withheld the language assistance needed to understand these orders.²² The Department’s most recent pronouncement on language assistance, **Management Update 8/13/07**,²³ recognizes the LEP worker’s right to communications in his own language but only *until* counsel is retained. This policy penalizes LEP workers for retaining counsel by withholding language assistance thereafter.²⁴ When LEP workers retain counsel, the Department shifts large interpreter expenses to

²² See Appellant’s Brief page 27 & Appendix D on Interpreter Services both also prevent interpreters from interpreting between the worker and counsel. However, see **APPENDIX 7**, 1999 Task 10.30A correspondence should be in the worker’s language.

²³ Appended to the Department’s reply to Amicus Briefing in *Kustura*, attached here as **APPENDIX 2**, now before this Court as legislative fact.

²⁴ After the worker retains counsel, the Department provides free interpreter services only if the worker has phone or in person contact with the Department *without his counsel present, depriving him of counsel.*

them, diminishing their benefits below scheduled levels by that interpreter cost. Thus, an LEP worker's benefits are reduced on retaining counsel when EP workers incur no similar benefit reduction for retaining counsel.

Respondents may argue that providing language assistance means that LEP workers receive "more" benefits than EP workers. Washington recognizes that "Treating everyone exactly the same way does not ensure fairness. Truly equal treatment of people with disabilities often means treating them differently."²⁵ WAC 162-26-060(2) requires reasonable accommodation for those unable to use public facilities. While cost is a usually considered in reasonable accommodation under WAC 162-26-080, courts and state agencies must provide free language accommodation to those with language disability under RCW 2.42 and RCW 2.43. This eliminates the language barrier and makes justice accessible to them.

4. The Board Erroneously Limited Mr. Ferencák's Right to Counsel.

The Board's rulings limiting language assistance to Mr. Ferencák [CBRA 188-90] deprived him of the benefit of representation by counsel to prepare for and participate in hearings, specifically preventing him from having confidential consultation with and being "advised by" counsel at

²⁵ *Equal Access Report*, page 13. In the case of those medically or culturally unable to communicate in English, the Legislature mandated language accommodations in the form of providing free interpreters under RCW 2.42 and RCW 2.43 respectively to protect their rights in legal proceedings.

Board hearings. In discussing accommodations necessary for persons with communication barriers, the *Equal Access Report* says on page 21: “It is important to ensure that attorney-client discussions and sidebar conferences remain confidential.” Further GR 11.3(d) on use of interpreters for telephonic non-evidentiary proceedings recognizes the LEP person’s need for and right to confidential attorney communication, saying “Attorney-client consultations must be interpreted confidentially.” Mr. Ferencák and his counsel were unable to prepare adequately for hearing without an interpreter. Because the Board refused to provide interpretation at perpetuated testimony, Mr. Ferencák could not 1) hear evidence in his appeal, 2) assist counsel by suggesting questions on his employee benefits at injury, or 3) understand what testimony he could offer on the wage calculation issues. These rulings prejudiced Mr. Ferencák by preventing him from enjoying the full benefits of legal representation enjoyed by EP workers at the Board. Prejudice resulted from the shifting of interpreter cost to him, diminishing his benefits.

D. THE SUPERIOR COURT ERRED GRANTING LEAVE TO INTERVENE.

1. The Board’s Motion to Intervene was Clearly Untimely.

The Board asserts it moved to intervene timely, admitting Mr. Ferencák served it a copy of his notice of appeal [Board brief 5] in 2005. The Board, on Mr. Ferencák’s request, sent CBRA to the Superior Court,

but not these documents it received: Notice of Appeal to Superior Court, Order Setting Case Schedule, and request for CBRA transmission. The Board did not move to intervene upon receiving notice of this appeal.

The Board asserts that 1) Mr. Ferencák sought “monetary relief” against it for its failure to provide sufficient interpreter services and 2) the Board learned this only three [3] days before it moved to intervene. In his Board appeal notice, Mr. Ferencák gave notice of his LEP status and need for interpreter services at Board/Department expense.²⁶ The Board limited the language accommodation provided and Mr. Ferencák moved for reconsideration.²⁷ In April 2003, he stated his intent to “appeal to the Superior Court on that issue” if requested language accommodation was not provided.”²⁸ His July 2005 Petition for Review stated this issue:

2. Is the injured worker entitled to reimbursement for interpreter services necessitated by his industrial injury from DLI and/or BIIA under the Industrial Insurance Act or other authority.²⁹

The Board received the PFR in **July 2005**, but asserts at page 5 that it first learned that Mr. Ferencák sought reimbursement was in **July 2006**. This claim is neither accurate nor credible. The Board’s motion to intervene was filed just before the continued trial date in August, 2006.

²⁶ CBRA 623-630, Notices of Appeal & of Non-English Speaking Status & Request for Relief, dated November 22, 2002, giving notice of his LEP status and requesting communications for him be in his language and for his counsel in English.

²⁷ CBRA 23

²⁸ Transcript of 4/10/03 telephonic conference at pages 3-4.

²⁹ CBRA 24.

Intervention was granted August 9th, a few days before the continued trial date and after all trial briefs had already been filed. The intervention motion was untimely as the Board knew from at least July 2005 that reimbursement for interpreter services denied by the Board.

2. The Board Lacks a Sufficient Interest to Intervene.

The Board states it sought intervention due to a suggested monetary effect on the Board of a potential future order requiring reimbursement. The Board's budget will be unaffected by any reimbursement order. RCW 51.52.030 both 1) authorizes the Board to incur interpreter expenses to process Industrial Insurance appeals and 2) mandates that those expenses be paid, like other benefits under the Act, from the Medical Aid and Accident funds -- not from the Board's budget.³⁰ This is appropriate, as Department policies and publications show that it has long paid for interpreter services as benefits under the Act.³¹ As the Board has never a financial interest in this case, intervention was not appropriate.

³⁰ The Medical Aid fund pays for medical expenses and interpreter costs for medical care. The Accident fund pays for disability benefits.

³¹ Interpreter services are provided for communication in medical care, IME's, vocational rehabilitation, and claim adjudication. **Appendix D** to Appellant's Brief PB 05-04, p. 8, **Appendices 2, 3, 4, & 7** to this brief.

3. The Department Adequately Protected the Board's Interest.

The Department is required to protect the Medical Aid and Accident Funds. The Department adequately represented the Board's interest at Superior Court in *Kustura* where intervention was not sought.

4. Public Policy Disfavors Board Intervention.

The Board at p. 10 justifies its intervention as Mr. Ferencak's party opponent based on its role as "a separate, neutral tribunal." Allowing the Board to litigate as Mr. Ferencak's party opponent while it handles his other Board appeals³² does nothing to preserve it as a "separate and neutral tribunal." The Court in *Kaiser Aluminum & Chemical Corp. v. Dep't of Labor & Ind.*, 121 Wn.2d 776 786, 854 P.2d 611 (1993) explained why allowing the Board to appear as a party in appeals of its own decisions would destroy -- rather than protect -- its neutrality directly contradicting the Board's contention here.

The Board also suggests intervention was required to allow it to justify its rulings and protect its own procedures. Appellate courts rule on lower court rulings and procedures constantly. Lower courts do not intervene on appeal and are not allowed to appear and argue in favor of their rulings or procedures. To allow this would destroy judicial impartiality on which justice in Washington State is firmly based.

³² *In re Ivan Ferencak*, Board Docket Nos. 05 17298 and 06 21898.

5. By Intervening, the Board Subjected Itself to Attorney Fees.

By intervening, the Board voluntarily risked an award of attorney fees and costs under RCW 51.52.130 and *Brand, supra*. By willingly assuming the risk of such an award, the Board, did not acquire standing.

E. THE DEPARTMENT ERRONEOUSLY OMITTED PART OF THE WAGES MR. FERENČAK RECEIVED FOR DOING HIS JOB.

1. Defining “Wages” is an Issue of Law.

The definition of "wages" requires interpreting RCW 51.08.178 and is therefore a question of law that is reviewed *de novo*. *Rose v. Dep't of Labor & Indus.*, 57 Wn.App. 751, 757, 790 P.2d 201 (1990).

2. Medical and Dental Benefits were Undervalued.

The Department's Brief page 2 asserts medical benefits were overvalued at \$197.15/month. The employer's representatives testified the employer paid monthly health insurance premiums of either \$202.26 or \$202.40.³³ Thus, under *Cockle, infra*, the medical insurance component of Mr. Ferencak's "wages" was undervalued by at least \$5.11/month.

3. “Wages” Reflects Lost Future Earning Capacity.

RCW 51.08.178 provides compensation is based on “monthly wages the worker was receiving from all employment at the time of injury.” In *Kilpatrick v. Dep't of Labor & Ind.*, 125 Wn.2d 222, 230, 883

³³ Adm. Ex. 12 & RP 11/10: 45-46 Mr. McCadam corrected his earlier error testifying the monthly premiums paid were \$158.40 for medical and \$44 for dental insurance.

P.2d 1370 (1994), the Court recognized the Act's goal is "to insure fair compensation of disabled workers," saying on 230:

The purpose of workers' compensation benefits is to reflect **future** earning capacity rather than wages earned in past employment. [Emphasis added]

4. Exclusion of Holiday and Vacation Pay was Error.

When injured, Mr. Ferencák qualified for holiday pay and was earning paid vacation.³⁴ Under *Fred Meyer v. Shearer*, 102 Wn.App. 336, 8 P.3d 310 (2000), this court ruled holiday pay constitutes "wages." Both Mr. Ferencák's yearly one week paid vacation and six yearly paid holidays are moneys which should be included in his "wages."³⁵

There was additional value to these moneys in that Mr. Ferencák received them for time not worked, leaving him available to engage in other income-generating work then – something of value to him.

Mr. Ferencák's holiday and vacation pay were also part of his future earning capacity. Both ended when injury prevented him from working to earn more. As part of his future earning capacity lost due to injury, these components must be included in Mr. Ferencák's "wages" unless this Court overrules both *Kirkpatrick* and *Fred Meyer*.

³⁴ December 5, 2003 transcript, testimony of Ray Corwin on page 28.

³⁵ December 5, 2003 transcript, testimony of Ray Corwin on pages 27-28.

5. Mr. Ferencák's Bonus was Erroneously Excluded.

The employer paid a year-end bonus for employee labor.³⁶ Due to his injury, Mr. Ferencák could not work most of the year. He received the bonus on the time he worked before injury,³⁷ but lost the bonus on work he lost due to injury. The Department asserts this bonus was omitted from “wages,” for lack of proof he received any bonus *in the previous year*. Such proof was lacking only because 1) the employer’s witnesses failed to bring all subpoenaed pay documentation³⁸ and 2) the IAJ neither required the evidence be produced nor elicited it herself. Where an LEP worker at the Board cannot communicate with counsel, it is incumbent upon the IAJ to scrupulously discharge the duty to secure evidence “necessary to fairly and equitably decide the appeal” under WAC 263-12-045(2)(f).

The profit sharing bonus meets both definitions for wages stated in *Malang v. Dep’t of Labor & Ind.*, Div. II No. 34504-8 (July 17, 2007), “remuneration from an employer” and “consideration . . . for work performed.” Because “wages” reflect *future*, not past, earning capacity, “wages” includes the full bonus Mr. Ferencák would have received if not injured. When the Act’s remedial purpose is considered, this additional

³⁶ CBRA Admitted Ex. 14 shows the bonus was paid at 2.32% of gross wages. This calculated to \$9.74 per month omitted from Mr. Ferencák’s wage calculations.

³⁷ November 11, 2004, Corwin testimony at pages 18-19,

³⁸ RP 12/5: 26, lines 11-18. Documentation on profit sharing payments was never provided pursuant to the *subpoena duces tecum* CBRA 429-432.

compensation lost due to industrial injury should be characterized most favorably to Mr. Ferenóak and included in his “wages.”

6. Employer Payments for Government-Mandated Employee Benefit Programs Were Erroneously Omitted from “Wages.”

The Department asserts employer contributions for government-mandated employee benefit programs do not meet the *Cockle* “benefits of like nature” test.³⁹ These contributions fund either subsistence benefits to ensure basic survival⁴⁰ or health care.⁴¹ The fact these programs are critical to protection of worker health and survival is underscored by the government’s requirement that all employers fund them, by authority discussed in the opening brief not repeated here, and federal and government recognition of the “critical nature” of these benefits.⁴² Thus, there is little doubt these government-mandated health and subsistence programs are “benefits of a like nature” and includable as “wages.”

The Department compares these government-mandated benefits with the union benefits supplementing these programs which the Supreme Court determined are not “wages” in *Gallo v. Dep’t of Labor & Ind.*, 155

³⁹ “We therefore construe the statutory phrase ‘board, housing, fuel, or other consideration of like nature’ in RCW 51.08.178(1) to mean readily identifiable and reasonably calculable in-kind components of a worker's lost earning capacity at the time of injury that are critical to protecting workers' basic health and survival” *Cockle, infra*, at 822.

⁴⁰ Social Security Disability, Unemployment Compensation, Industrial Insurance.

⁴¹ Medicare, Medicaid, and Industrial Insurance.

⁴² E.g. *Dep’t of Labor’s Title VI LEP Guidance*, 68 Fed.Reg. 32290-01 (May 29, 2003) at 32298, 32299, 32302 stressing the essential nature of unemployment benefits.

Wn.2d 470, 120 P.3d 564 (2005). To do so is to compare life-sustaining bread and water with champagne and caviar. The government benefits at issue are first-tier safety net programs intended to ensure, in exchange for their work, workers and their families' basic survival and health.

Whether the Department calls these payments "contributions," "taxes," "premiums," or some other term is of no consequence. Focusing on the label applied to the payments over the nature of the benefits elevates form over substance. Any such argument should be rejected.

The suggestion these payments are not "consideration" must also be rejected. Employers make contributions only because workers labor for them.⁴³ The involuntary nature of these contributions neither alters their function nor diminishes their importance to workers.

F. CASES CITED BY RESPONDENTS DO NOT SUPPORT THEIR POSITIONS.

1. The Department Cites Authority which Supports Appellant.

The Department cites cases *Nazarova v. INS*, 171 F.3d 478 (7th Cir. 2006), *Gutierrez-Chavez v. INS*, 298 F. 3d 824 (9th Cir. 2002) recognizing LEP persons' interpreter rights that support appellant.⁴⁴

⁴³ The amounts the employer must pay for these worker benefit programs is calculated either as a percentage of the employee's pay or as a multiplier of the number of hours the employee worked. The record contains those amounts: .062% for Social Security, 1.45% for Medicare, \$6.80 per week for Industrial Insurance, but documentation on the employer's cost for Unemployment Compensation was not produced. Moss RP 4/18, Corwin RP 12/5: 25, EX 4.

⁴⁴ Accord including the right to an interpreter to assist in trial preparation *US v. Lim*, 794 F.2d 469 (9th Cir. 1986); *Augustin v. Sava*, 735 F.2d 32 (1984).

2. The Department Cites Cases of No Authority in Washington.

The Department cites cases ignoring our Supreme Court ruling that resorting to other states' cases is "useless" to interpret our "unique" Act. *Stertz, supra, Cockle v. Dep't Labor & Ind.*, 142 Wn.2d 801, 815, 16 P.2d 583 (2000). It cites *Lander v. Ind'l Com'n of Utah*, 894 P.2d 552(1995) for the proposition that workers lack due process protection, ignoring the fact that in Washington under *Buffelen Woodworking v. Cook*, 28 Wn.App. 501, 615 P.2d 704 (1981) even *potential* benefits on claims "not finally adjudicated" trigger "procedural due process requirements" at the *Department* level. Our Supreme Court held workers enjoy due process protection at the Board in *Karlen v. Dep't of Labor & Ind.*, 41 Wn.2d 301, 304, 249 P.2d 364 (1952). Due process thus attached when Mr. Ferenčák's report of injury was filed in March 2002. CBRA 207.

3. Respondents Cite Cases Not or No Longer Authoritative.

The Department cites but fails to advise this Court that *Alfonso v. Board of Review*, 444 A.2d 1075 (NJ 1982)⁴⁵ has not been authoritative since 1986 when a new statute required notices in the LEP person's language.⁴⁶ In *Rivera v. Board of Review*, 127 NJ 578, 606 A.2d 1087 (1992), the Court disapproved of *Alfonso*, finding a "late" appeal timely after LEP receipt of an English-only notice. Since 1986, the New Jersey

⁴⁵ The 5 to 4 decision had a well-reasoned dissent later approved in *Rivera*.

⁴⁶ As Washington law requires for DSHS & ESD notices as briefed earlier.

law has supported appellant, not the Department. Respondents also cited cases decided before EO 13166 or not addressing RCW 49.60, RCW 2.43, RCW 2.43 or RCW 51 and not authoritative on issues here.⁴⁷

4. Respondents Ignore Legislative Intent of RCW 51, 2.43, & 49.60.

Respondents ignore the intents of RCW 51.12.010 to minimize the worker economic losses due to injury, of RCW 2.43.010 to provide interpreters to protect LEP rights in legal proceedings, of RCW 49.60 and Title VI to prevent discrimination. RCW 49.60.010; 42 USC § 2000d.

G. THE COURT NEEDS TO PROTECT OUR INDUSTRIAL INSURANCE PLAN FROM THE BOARD AND THE DEPARTMENT.

While strict compliance with Title VI is needed for LEP worker protection, it is also essential to preserve significant federal funding for our Industrial Insurance program. Board and Department noncompliance with Title VI, whether by ignorance or, as here, by intent, risks all federal funding which assists Washington workers. As Adelson⁴⁸ explains:

Ignorance of Title VI and statutory non-compliance put federal aid recipients at significant risk. If a complaint alleging a Title VI

⁴⁷ *Abdullah v. INS*, 184 F.3d 158 (2nd Cir. 1999); *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1971); *Commonwealth v. Olivo*, 369 Mass. 62, 337 NE2d 904 (1985); *Frontera v. Sindell*, 522 F.2d 1215 (6th Cir. 1975); *Independent Meat Packers v. Butz*, 526 F.2d 228 (8th Cir. 1985); *Jara v. Municipal Court*, 578 P.2d 94 (Cal. 1978); *Kuqo v. Ashcroft*, 391 F.3d 856 (7th Cir. 2004); *Landon v. Plasencia*, 459 U.S. 21, 103 S.Ct. 321, 74 L.Ed.2d 21 (1982); *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976); *Soberal-Perez v. Heckler*, 717 F.2d 36 (2nd Cir. 1983); *Tejada-Mata v. INS*, 626 F.2d 721 (9th Cir. 1980); *Touré v. U.S.*, 24 F.3d 444 (2nd Cir. 1994); *Valdez v. NYC Housing Authority*, 783 F.Supp. 109 (S.D.N.Y. 1991).

⁴⁸ Adelson, *Title VI, LEP, and the Public Lawyer*, *The Public Lawyer*, 15:1 (2007).

violation is made to the federal government, a federal financial aid recipient could be faced with a compliance review by its funder or DOJ. Compliance reviews are intrusive, lengthy audits. The ultimate sanction, if the federal government determines that a federal assistance recipient has violated Title VI, is termination of that federal assistance.

Because the Board and Department now endanger the program's federal funding by violating Title VI, DOJ LEP Guidance, and DOL Title VI regulations, this Court must act to ensure those federal funds continue for the benefit of workers and employers throughout Washington State.

H. SPACE IS INSUFFICIENT TO ADDRESS REMAINING ARGUMENTS.

Due to the page limit imposed on this reply, Respondents' remaining arguments can only be addressed at oral argument.

IV. CONCLUSION

For the reasons stated above, the Court should

- 1) Reverse and remand with instructions for entry of judgment in Mr. Ferencak's favor for attorney fees and costs, including interpreter costs at the Department and Board,
- 2) Delineate Mr. Ferencak's right to language accommodation and what must be included in "wages" for past and future proceedings,
- 3) Rule that attorney fees and costs may not be awarded against injured workers on appeal under the Industrial Insurance Act pursuant to the grand compromise.

Respectfully submitted this 15th of October, 2007,



Ann Pearl Owen, WSBA# 9033, Attorney for Ivan Ferencak, Appellant

APPENDIX 1



WASHINGTON
COURTS
ADMINISTRATIVE OFFICE OF THE COURTS

WASHINGTON STATE COURT INTERPRETER SERVICES

LIMITED ENGLISH PROFICIENCY (LEP) PLAN

July 2007

*THE WASHINGTON STATE LEP PLAN IS A JOINT PROJECT OF
THE ADMINISTRATIVE OFFICE OF THE COURTS, THE
INTERPRETER COMMISSION, NORTHWEST JUSTICE PROJECT,
AND COLUMBIA LEGAL SERVICES*

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I. INTRODUCTION AND PURPOSE OF LEP PLAN

As Washington State's population grows, the state's immigrant population and the Limited English Proficient (LEP)¹ community of individuals requiring access to Washington Courts increases as well. Washington State Courts, the Administrative Office of the Courts (AOC) Interpreter Program, and related stakeholders have developed methods and materials to meet the needs of the LEP population in our courts. However, the quality of the services in courts across the state has been inconsistent and at times falls below the level necessary to meet federal and state standards for providing meaningful access to the courts by LEP individuals. The goal of the Washington State LEP Plan is to assist courts statewide in devising methods to provide access to LEP individuals that consistently meet or exceed federal and state mandates.

To that end, the Washington State LEP Plan provides trial courts with a brief outline of the federal and state mandates regarding the level of services that should be made available to LEP individuals, and a guide to assist trial courts in meeting these important requirements. It lists organizations and individuals (including contact information) that have an interest in improving LEP individuals' ability to access the courts, and describes the efforts made by these groups to enable the trial courts to more readily provide quality interpreters.

This Washington State LEP Plan also includes a template and step-by-step directions for creating a Language Assistance Plan (LAP)² that can be adapted to the local needs and circumstances of each court, cluster of courts, or all courts in a county or region. **See Appendices A and B.** By utilizing the template and directions, each court or regional cluster can assess the language needs of its own court community and develop a local plan for ensuring meaningful access to the courts by all LEP individuals. This LEP plan also offers practical solutions to many of the language assistance issues faced by courts across our state. In addition, it identifies courts that have experience in implementing these suggestions and includes contact information. It is also hoped that

¹ An LEP individual is a person who does not speak English as their primary language and who has a limited ability to read, write or understand English. This person may need assistance with respect to a particular type of service, benefit or encounter. (Federal Register, Vol. 67, No 117, 41459).

² LAP's include policies, procedures, protocols, tools and services for ensuring equal access to LEP individuals, as well as for deaf and hearing-impaired persons. **See Appendices A and B.**

this LEP plan will facilitate communication and exchange of ideas between trial courts on ways to address our common concerns, thus enabling all courts to ensure that LEP individuals across the state receive a level of court access equal to those for whom English is their first language.

This document, together with the LAP template and directions, is intended to be a user-friendly guide to assist courts in (1) developing language assistance plans, (2) complying with federal and state mandates, and (3) meeting the needs of the LEP population in your jurisdiction. Please feel free to contact the Washington State Interpreter Commission or the AOC Interpreter Program with any comments and suggestions that will help achieve these goals.

The 2007 Legislature appropriated \$2 million for interpreter services in fiscal years 2008 and 2009. The Legislature required each trial court, as a condition of receiving funds to pay for interpreter services, to create a Language Assistance Plan consistent with standards established by the Administrative Office of the Courts. The attached plan, together with the LAP plan template and directions, embody the AOC LAP standards.

II. MANDATES

A. Interpreters in Court Proceedings

1. Federal and Washington law require that LEP persons be provided with competent interpreters in all court proceedings.

Both federal and Washington law require that courts provide all Limited English Proficient (LEP) people with competent interpreters during all court hearings, trials and motions in which the LEP individual participates as a party or witness.

The Federal Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin. In the regulations and guidance implementing the Civil Rights Act, the U.S. Department of Justice (DOJ) indicated that every court receiving federal financial assistance must take reasonable steps to ensure that all LEP people will have meaningful access to all court proceedings and court-related programs and activities. Washington State trial courts that receive federal financial assistance are subject to the requirements of this Act, the DOJ regulations, and the DOJ Guidance. Failure to comply with the Civil Rights Act requirements or DOJ Guidance could result in loss of federal funding for the court.

DOJ guidance states that courts must provide competent language services for every court matter for which an LEP person may or must be present, including hearings, trials, and motions. This includes not only all criminal matters, but also all civil matters. The DOJ guidance offers a four-factor analysis, described in Section B, to determine what language assistance is required beyond provision of interpreter services for court proceedings.³

Under the Washington State interpreter statute, RCW 2.43.010, it is the policy of the court to make a qualified interpreter available in all legal proceedings in which an LEP person is involved.

Federal requirements and Washington law differ somewhat on who must pay for the cost of interpreters in legal proceedings. Washington's interpreter statute provides that

³ Federal Register, Vol. 67, No 117, 41471.

the court, governmental body, or agency initiating the proceeding is to pay for the interpreter in all legal proceedings in which the LEP individual is compelled to appear by the court, governmental body, or agency.⁴ In all other proceedings, the cost of the interpreter is borne by the LEP individual unless the person is indigent, in which case the governmental body responsible for the legal proceeding bears the cost.⁵

The following is the DOJ's position regarding who should pay for an interpreter:

*...when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.*⁶

Additionally, the Washington Court of Appeals in Division II (in a published decision) and the Court of Appeals in Division III (in an unpublished decision) both ruled that in a criminal case, requiring an LEP criminal defendant to pay for an interpreter but not requiring a hearing-impaired criminal defendant to pay for an interpreter violates both the Equal Protection Clause of the U.S. Constitution and the Privileges and Immunities Clause of Washington's Constitution. (*State v. Marintorres*, 93 Wn. App. 442 (1999, Div. II); *State v. Al-Khaledy*, Court of Appeals Div. III, Docket No. 22945-9-III, (2004).

2. The Washington Interpreter Statute Directs Courts on Interpreter Qualifications.

The Washington interpreter statute (RCW 2.43.030, reproduced below) directs courts on the qualifications required for interpreters used for legal proceedings. The statute requires that courts use a certified interpreter if the Administrative Office of the Courts (AOC) has certified the language that is being interpreted. After 1990, AOC began certifying language interpreters. AOC has certified interpreters in ten languages: Arabic, Cantonese, Korean, Laotian, Mandarin, Russian, Somali, Spanish, Vietnamese and American Sign Language (ASL). If a certified interpreter is not "reasonably available," the court is required to use a "qualified interpreter." Essentially, the court is required to use the most qualified interpreter that is reasonably available.

⁴ RCW 2.43.040(2).

⁵ RCW 2.43.040(3).

⁶ Federal Register, Vol. 67, No 117 at 41462.

If the court must qualify an interpreter from the bench, judicial officers are encouraged to use the list of questions contained in **Appendix C**. Additional detail on the certification and registration (a new intermediate category of interpreter qualification) process for court interpreters can be found in section IV – Stakeholders.

RCW 2.43.030 Appointment of Interpreter

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the Administrative Office of the Courts, unless good cause is found and noted on the record by the appointing authority. For purposes of chapter 358, Laws of 1989, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the Administrative Office of the Courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified, or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the

record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the Code of Ethics for language interpreters established by court rules.

3. Court Interpreters Must Comply with the Code of Ethics for Court Interpreters

All certified and registered interpreters are tested on the Code of Ethics for Court Interpreters through the certification / registration examination process. Regardless of an interpreter's credentials, all interpreters in court are expected to be familiar with and follow the Code of Ethics (which is the same as the Code of Conduct for Court Interpreters in GR 11.2). **See Appendix D.**

RCW 2.43.080 Code of Ethics

All language interpreters serving in a legal proceeding, whether or not certified or qualified, shall abide by a Code of Ethics established by Supreme Court rule.

Washington State certified and registered interpreters have been trained and tested on GR 11.2, the Code of Conduct. **See Appendix D.** Further, they have access to comments on the Code of Conduct. **See Appendix E.**

B. Language Services for LEP Persons' Out-of-Court Contact with Court Staff and Other Court Services

Under the DOJ Guidance, in addition to providing competent interpreters in court, when a court appoints an attorney to represent an LEP defendant, the court should ensure either that the attorney is proficient in the LEP person's language, or that a competent interpreter is provided during consultations between the attorney and the LEP person.

The DOJ guidance describes Title VI protections that extend beyond providing interpreters in court proceedings. The Guidance suggests that courts should consider four factors to determine the extent of the language assistance that must be provided to LEP individuals.⁷ The four-factor analysis consists of the following elements:

⁷ Id. at Section V, pp. 41459 – 41461.

1. Number or proportion of LEP people in the court's jurisdiction – demography;
2. Frequency with which LEP individuals come into contact with the court;
3. The nature and importance of the program, activity or service provided by the court to the LEP person (including the consequences of lack of language services or inadequate services); and
4. Resources available to the court locally and statewide, and costs.

In such other areas of language assistance as translation of forms, bilingual court staff, signage, etc., the four-factor analysis can be used to determine the level of assistance that must be provided and the manner in which it should be made available.

In determining what language services should be provided, DOJ guidance states that “the more important the activity, information, service or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed....A [federal funding] recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State or local entity to make an activity compulsory...can serve as strong evidence of the program's importance.” Examples of programs or services that are often made compulsory by courts include parenting classes, mandatory mediation or arbitration, and settlement conferences.⁸

The DOJ guidance states that courts should ensure that eligible LEP individuals have equal access to programs that will give them an opportunity to avoid or lessen confinement as part of a criminal sentence, including such programs as anger management, counseling, domestic violence treatment, and substance abuse counseling. Courts should also assess the need for language services in contacts with the court system outside of the courtroom, particularly in allowing access to courts or calendars with high numbers of unrepresented individuals, such as family, landlord-tenant, traffic, and small claims courts.⁹

In addition to discussing the need for oral interpreter services, the DOJ guidance addresses the need for translation of written materials. The guidance directs federal funding recipients to consider whether or not a document is “vital” and should be

⁸ Id. at pp. 41471 – 41472.

⁹ Id.

translated. The guidance directs that whether a document is considered "vital" should be based on the importance of the program or service it involves, and the consequence to the LEP person if the information provided by or submitted via the document is not conveyed accurately or in a timely manner. For example, applications for drug and alcohol counseling would be "vital"; applications for a bicycle safety course would not. Documents that may be "vital" include intake forms with the potential for important consequences, applications to participate in a court-ordered program or activity, and written notices of rights.¹⁰

Where a significant number of LEP individuals who speak a particular non-English language are often in need of court-related services, the court may decide to provide court forms translated into that particular language. For example, a county may translate its "how-to" materials helping unrepresented people navigate the family court process and providing information for domestic violence survivors. Conversely, where the number of LEP individuals who speak a particular language is small, simply providing an interpreter to translate the documents orally would suffice.¹¹

The DOJ strongly recommends that each court use the four-factor analysis to develop a written language assistance plan. A written plan will create a framework for providing reasonable and necessary language assistance to LEP persons and assist in training judges and court staff to implement the plan. In addition, a written plan is an excellent method of documenting the court's compliance with the mandate to ensure meaningful access.

¹⁰ Id.

¹¹ Id.

APPENDIX 2



Management Update

Insurance Services: Claims Administration and Self-Insurance

Interpreter and Translation Services to Workers

Effective Date

08/13/2007

REVISED 08/17/07

Topic

Interpreter and
Translation Services
To Workers

Issuing Authority

Sandy Dzedzic
Cheri Ward
Jean Vanek

The department or self-insured employer (SIE) (including the SIE third party administrator) will provide an interpreter to communicate with an unrepresented worker who has limited English-speaking proficiency or similarly limiting sensory impairment.

NOTE: Where a worker with limited English proficiency is represented by an attorney, the department or SIE may communicate through the attorney in English. It is the responsibility of the attorney representative to communicate with his or her client worker. If the represented worker with limited English proficiency contacts the department or SIE by phone or in person without counsel, an interpreter is authorized for the oral communications. The department or SIE is not required to provide interpreters for communications in relation to any proceedings at the BIIA or Court.

When the worker requests interpreter services, the department or SIE may verify whether the worker needs assistance in translation. Workers can report limited English proficiency status on the Report of Accident, SIF2 form, or by notifying the department or SIE by phone or letter.

Limited English proficiency is defined as limited ability or inability to speak, read, or write English well enough to understand and communicate effectively. This includes most people whose primary language is not English. Services should also be provided to workers similarly impacted by hearing, sight, or speech limitations.

Interpreters are authorized when a limited English proficiency worker needs to communicate with the department or SIE, attend medical and vocational appointments, and at independent medical examinations (IME). Authorized interpreters must be provided by the department or SIE for IMEs.

Interpreter services also include written translation of necessary correspondence to and from the unrepresented limited English proficiency worker. Copies of both the original and translated versions of the document should be maintained in the claim file.

Resources

AT&T Language Line Instructions

http://ohr.inside.lni.wa.gov/webhome/resource_docs/InterpreterService.htm

Online Reference System (OLRS)

<http://olrs.apps-inside.lni.wa.gov/>

Claims Training Bulletin: Translation Process

Management Memo: Spanish Translations

Training Handout: Services for the Hearing & Speech Impaired

WAC 296-20-2025

Contact Claims Training if you have any questions.

NOTE: This is an interim policy change. This issue has been referred to the policy committee to be included in upcoming revisions.

APPENDIX 3



The Report of Industrial Injury or Occupational Disease

Dept of Labor & Industries

AE 98128

This form is used to apply for workers' compensation benefits from the Department of Labor and Industries State Fund. If L&I accepts the claim, it will pay the worker's medical bills and - if unable to work - a portion of lost wages. L&I will consider each section of this form before making a decision.

Keep your paperwork moving smoothly

- **Use a ball-point pen, press firmly and print legibly.**
- **Answer each question completely.** Without full information, benefits could be delayed. If you need to attach additional pages, be sure to write the claim number on each page.
- **Describe the accident or occupational disease in detail.** If an arm was injured in a fall, tell us which arm and describe how the fall occurred.

Worker instructions

- **Help us accurately calculate time-loss benefits for which you may be eligible.** Report your marital status and dependents. Be prepared to show documents to verify your information.
- **Let us know if you had more than one paying job at the time of the injury.**
- **Select a health care provider.** You have the right to choose any health care provider who is qualified to treat your condition and is reasonably convenient for you to visit. Qualified health care providers include medical, osteopathic, chiropractic, naturopathic, and podiatric physicians, dentists, optometrists and ophthalmologists. Advanced registered nurse practitioners and physician assistants also may provide treatment.
- **It is best to stay in touch with your employer and health care provider.** If your health care provider says you cannot work, let your employer know. He/she may be able to find work you can do safely while you recover.
- **Tell us if you move or change health care providers.**
- **Do not pay related medical bills** unless we inform you your claim was denied. If a pharmacy requires you to pay, keep the receipt so we can reimburse you if the claim is allowed.
- **Keep your claim number handy.** It is printed on all correspondence we send you.

Health care provider instructions

- **Give the worker's copy of this form to the patient BEFORE you complete your section.**
- **Give us a specific diagnosis with an objective description of your findings and patient observations.** Provide the ICD code and the part of the body specifically affected.
- **Estimate how long your patient may be unable to work and describe physical restrictions.** This will help us decide whether to arrange for time-loss benefits or whether your patient, with your approval, may benefit from light-duty or modified work while recovering.
- **Provide a medical treatment plan.** Include needed diagnostic testing or treatments.
- **Indicate whether the patient has previously been treated for the same or similar condition.** If available, please indicate the health care provider's name and city of treatment.
- **Include your individual L&I provider number-not your hospital's or clinic's.**
- **Mail or fax the L&I copy to us within FIVE days of treatment.** Keep the health care provider's page for your records.

Where to send this report:

Mail: Department of Labor & Industries
P.O. Box 44299
Olympia WA 98504-4299
FAX: 1-800-941-2976

How to get help:

Provider Hotline: 1-800-848-0811
Easy-Access Line: 1-800-831-5227
Information Hotline: 1-800-547-8367
Information Online: www.lni.wa.gov

Legal Notices:

- **False information:** RCW 51.48.020 sub section (2) provides: Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a Class C felony when such claim or application involves an amount of five hundred dollars (\$500) or more. When such claim or application involves an amount less than \$500, the person giving such information shall be guilty of a gross misdemeanor.
- **Medical Release:** RCW 51.36.060 provides: All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the **employer**, the **claimant's representative** and the **department** upon request, and no person shall incur any legal liability by reason of releasing such information.
- **Social Security Number Disclosure:** Disclosure of your social security number is not mandatory, it is requested as part of your application for compensation under Chapter 51.28 RCW and will be used to facilitate the handling of your claim under Title 51 RCW.

Online, L&I's secure Claim & Account Center

Get the most up to date, complete information about your patients' claims online at L&I's secure Claim & Account Center www.ClaimInfo.LNI.wa.gov

Check the status of a workplace injury

- View claim documents, medical reports and L&I's notes about the claim
- Find out if L&I has authorized treatment or paid a bill

Send information to L&I

- Send us a secure message
- Let us know your patient's medical ability to work

Technical Support Assistance:

call: 1--360-902-5999

e-mail: websupport@LNI.wa.gov

NOTE: Workers' compensation claims from employees of self-insured businesses and claims for crime victims are not available in the Claim & Account Center.

REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

WORKERS INFORMATION

Language Preference (circle one) English Spanish Russian Korean Chinese Vietnamese Laotian Cambodian Other:				Claim # AE 98129	
1. Name (First-Middle-Last)		2. Sex (circle one) Male Female	14. Date of Injury or Last Occupational Exposure / /		15. Time of Injury (circle one) AM PM
3. Social Security Number	4. Home Phone ()	5. Birthdate / /	16. Shift (circle one) Day Swing Night		
6. Home Address		7. Height (Ft-Inch)	17. Have you ever been treated for same or similar condition? (circle one) YES NO		
City	State	ZIP Code	18. Is this condition due to a specific incident? (circle one) YES NO		
9. Mailing Address (if different from home address)		8. Weight	19. Tell us what body part was injured and how the injury or exposure occurred. (Include tools, machinery, chemicals or fumes that may have been involved)		
City	State	ZIP Code	10. Marital Status (circle one) Married Widowed Separated Single Divorced		
11. Dependent Children Include unborn, estimate birthdate. Benefits will be based in part on number of legally dependent children. If you don't have custody, complete item 13.		12. Spouse's Name	20. Were you doing your regular job? YES NO		
Name	Relationship	Legal Custody (circle one) Y N	Birthdate / /	21. Where did the injury or exposure occur? (circle one) Employer Premises Jobsite Other:	
		Y N	/ /	22. Address where injury or exposure occurred? (Business Name if at Business Location)	
		Y N	/ /	Address	
		Y N	/ /	County	
		Y N	/ /	City	
		Y N	/ /	State	
		Y N	/ /	ZIP Code	
13. Name & Address of Children's Legal Guardian		23. Was this incident caused by failure of a machine or product OR someone who is not a co-worker? (circle one) YES NO POSSIBLY	24. List any Witnesses		
				25. When will you return to work? / /	
				26. When did you last work? / /	
				27. Did you report the incident to your employer? Name/Title of Person Reported To	
				YES NO	
				28. Date you reported it / /	
				29. Was your employer contributing to your and/or family's medical, dental and/or vision insurance on the day you were injured? (circle one) YES NO	
30. Business Name of Employer		31. Type of Business	32. How long have you worked there? Years Months Weeks Days		33. Employer's Phone # ()
34. Employer Address		35. Your Job Title & Duties			
City	State	ZIP Code	36. Rate of Pay at this Job (write amount, circle one) \$ Hour Week Day Month	37. Hours Per Day	39. Additional earning (circle all that apply) (daily average) Piecework Tips Commission Bonuses
				38. Day Per Week	
40. How may paying jobs do you have?	41. Are you? <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Corp. Officer	<input type="checkbox"/> Does not apply <input type="checkbox"/> Corp. Shareholder <input type="checkbox"/> Corp. Director <input type="checkbox"/> Optional Coverage	42. Signature I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit health care provider, hospitals, or clinics to release medical reports generated by themselves & others to the Dept. of Labor and Industries. X		
			Today's Date / /		

HEALTH CARE PROVIDERS INFORMATION

1. Diagnosis		2. ICD Diag. Codes	3. Date you first saw patient for this condition. / /	Claim # AE 98129	
4. Is the injury due to a specific incident? YES NO		7. Was the diagnosed condition caused by this injury or exposure? (circle one of four) PROBABLY (50% or more) YES POSSIBLY (Less than 50%) NO	8. Will the condition cause the patient to miss work? (circle one) YES NO if YES, indicate Return to work in ___ days		
5. Objective findings supporting your diagnosis (Include physical, lab and X-ray findings)		9. Is there any pre-existing impairment of the injured area? YES If YES, describe briefly or attach report NO	10. Has patient ever been treated for the same or similar condition? YES If YES, give year, name of health care provider and city of treatment NO		
6. Treatment and diagnostic testing recommendations		11. Are there any conditions that will prevent or retard recovery? YES If YES, describe briefly or attach report NO	12. Referral health care provider. Complete if you refer patient to another health care provider for follow up Name Phone ()		
13. Name of Hospital or Clinic Name Phone ()		14. Attending Health Care Provider Name Phone ()	L&I USE ONLY		
Address	City	Address			
City	State	ZIP Code	17. Signature Licensed Health Care Provider must sign report X		
15. Place of Service (circle one) Inpatient ER Dr's Office/Clinic	16. Attending Health Care Provider Provider Number NPI Number (after 3-1-07)	Today's Date / /			



REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

Language Preference (circle one)

English Spanish Russian Korean Chinese Vietnamese Laotian Cambodian Other:

Claim # **AE 98129**

WORKERS INFORMATION

1. Name (First-Middle-Last)		2. Sex (circle one) Male Female		14. Date of Injury or Last Occupational Exposure / /		15. Time of Injury (circle one) AM PM		16. Shift (circle one) Day Swing Night			
3. Social Security Number		4. Home Phone ()		5. Birthdate / /		17. Have you ever been treated for same or similar condition? (circle one) YES NO					
6. Home Address				7. Height (Ft-Inch)		18. Is this condition due to a specific incident? (circle one) YES NO					
City		State		ZIP Code		19. Tell us what body part was injured and how the injury or exposure occurred. (Include tools, machinery, chemicals or fumes that may have been involved)					
9. Mailing Address (if different from home address)				10. Marital Status (circle one) Married Widowed Separated Single Divorced		20. Were you doing your regular job? YES NO		21. Where did the injury or exposure occur? (circle one) Employer Premises Jobsite Other:			
City		State		ZIP Code		22. Address where injury or exposure occurred? (Business Name if at Business Location)					
11. Dependent Children Include unborn, estimate birthdate. Benefits will be based in part on number of legally dependent children. If you don't have custody, complete item 13.				12. Spouse's Name		Address County					
Name		Relationship	Legal Custody (circle one) Y N	Birthdate / /		23. Was this incident caused by failure of a machine or product OR someone who is not a co-worker? (circle one) YES NO POSSIBLY					
			Y N	/ /		24. List any Witnesses		25. When will you return to work? / /			
			Y N	/ /				26. When did you last work? / /			
			Y N	/ /		27. Did you report the incident to your employer? Name/Title of Person Reported To		28. Date you reported it / /			
			Y N	/ /		YES NO					
13. Name & Address of Children's Legal Guardian				29. Was your employer contributing to your and/or family's medical, dental and/or vision insurance on the day you were injured? (circle one) YES NO							
30. Business Name of Employer		31. Type of Business		32. How long have you worked there? ___ Years ___ Months ___ Weeks ___ Days		33. Employer's Phone # ()					
34. Employer Address				35. Your Job Title & Duties							
City		State		ZIP Code		36. Rate of Pay at this Job (write amount, circle one) \$ Hour Week Day Month		37. Hours Per Day		39. Additional earning (circle all that apply) (daily average) Piecework Tips Commission Bonuses	
						38. Day Per Week \$					
40. How many paying jobs do you have?		41. Are you? <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Corp. Officer		<input type="checkbox"/> Does not apply <input type="checkbox"/> Corp. Shareholder <input type="checkbox"/> Corp. Director <input type="checkbox"/> Optional Coverage		42. Signature I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit health care provider, hospitals, or clinics to release medical reports generated by themselves & others to the Dept. of Labor and Industries. X					
						Today's Date / /					

HEALTH CARE PROVIDERS INFORMATION

1. Diagnosis		2. ICD Diag. Codes		3. Date you first saw patient for this condition. / /		Claim # AE 98129	
4. Is the injury due to a specific incident? YES NO				7. Was the diagnosed condition caused by this injury or exposure? (circle one of four) PROBABLY (50% or more) YES POSSIBLY (Less than 50%) NO		8. Will the condition cause the patient to miss work? (circle one) YES NO if YES, indicate Return to work in ___ days	
5. Objective findings supporting your diagnosis (Include physical, lab and X-ray findings)				9. Is there any pre-existing impairment of the injured area? YES IF YES, describe briefly or attach report NO			
6. Treatment and diagnostic testing recommendations				10. Has patient ever been treated for the same or similar condition? YES IF YES, give year, name of health care provider and city of treatment NO			
				11. Are there any conditions that will prevent or retard recovery? YES IF YES, describe briefly or attach report NO			
				12. Referral health care provider. Complete if you refer patient to another health care provider for follow up Name Phone ()			
13. Name of Hospital or Clinic Name ()		Phone ()		14. Attending Health Care Provider Name ()		L&I USE ONLY	
Address				Address			
City		State		ZIP Code		17. Signature Licensed Health Care Provider must sign report	
15. Place of Service (circle one) Inpatient ER Dr's Office/Clinic		16. Attending Health Care Provider Provider Number NPI Number (after 3-1-07)		X		Today's Date / /	

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Send information to L&I

- * Send us a secure message
- * Let us know if your patient can return to work
- * Update medical information

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Medical Release: RCW 51.36.060: All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any state of the proceedings to the **employer**, the **claimant's representative** and the **department** upon request, and no person shall incur any legal liability by reason of releasing such information



REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

Language Preference (circle one) English Spanish Russian Korean Chinese Vietnamese Laotian Cambodian Other:										Claim # AE 88129	
1. Name (First-Middle-Last)				2. Sex (circle one) Male Female		14. Date of Injury or Last Occupational Exposure / /		15. Time of Injury (circle one) AM PM		16. Shift (circle one) Day Swing Night	
3. Social Security Number		4. Home Phone ()		5. Birthdate / /		17. Have you ever been treated for same or similar condition? (circle one) YES NO				18. Is this condition due to a specific incident? (circle one) YES NO	
6. Home Address				7. Height (ft-Inch) -		19. Tell us what body part was injured and how the injury or exposure occurred. (Include tools, machinery, chemicals or fumes that may have been involved)					
City		State		ZIP Code		8. Weight					
9. Mailing Address (if different from home address)				10. Marital Status (circle one) Married Widowed Separated Single Divorced		20. Were you doing YES NO your regular job?		21. Where did the injury or exposure occur? (circle one) Employer Premises Jobsite Other:			
City		State		ZIP Code		22. Address where injury or exposure occurred? (Business Name if at Business Location)					
11. Dependent Children Include unborn, estimate birthdate. Benefits will be based in part on number of legally dependent children. If you don't have custody, complete item 13.						12. Spouse's Name		Address County			
Name		Relationship	Legal Custody (circle one) Y N	Birthdate / /		23. Was this incident caused by failure of a machine or product OR someone who is not a co-worker? (circle one) YES NO POSSIBLY				24. List any Witnesses	
			Y N	/ /						25. When will you return to work? / /	
			Y N	/ /						26. When did you last work? / /	
			Y N	/ /		27. Did you report the incident to your employer? Name/Title of Person Reported To				28. Date you reported it / /	
13. Name & Address of Children's Legal Guardian						YES NO					
30. Business Name of Employer						31. Type of Business		32. How long have you worked there? ____ Years ____ Months ____ Weeks ____ Days		33. Employer's Phone # ()	
34. Employer Address						35. Your Job Title & Duties					
City		State		ZIP Code		36. Rate of Pay at this Job (write amount, circle one) \$ Hour Week Day Month		37. Hours Per Day		39. Additional earning (circle all that apply) (daily average) Piecework Tips Commission Bonuses	
								38. Day Per Week			
40. How many paying jobs do you have?		41. Are you? <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Corp. Officer		<input type="checkbox"/> Does not apply <input type="checkbox"/> Corp. Shareholder <input type="checkbox"/> Corp. Director <input type="checkbox"/> Optional Coverage		42. Signature I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit health care provider, hospitals, or clinics to release medical reports generated by themselves & others to the Dept. of Labor and Industries. X					
						Today's Date / /					

WORKERS INFORMATION

Keep your claim moving smoothly:

- Help us accurately calculate time-loss benefits for which you may be eligible: Report your marital status and dependents. Be prepared to show documents to verify your information.
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Legal Notices:

- False information: RCW 51.48.020 sub section (2) provides: Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a Class C felony when such claim or application involves an amount of five hundred dollars (\$500) or more. When such claim or application involves an amount less than \$500, the person giving such information shall be guilty of a gross misdemeanor.
- Medical Release: RCW 51.36.060 provides: All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative and the department upon request, and no person shall incur any legal liability by reason of releasing such information.
- Social Security Number Disclosure: Disclosure of your social security number is not mandatory, it is requested as part of your application for compensation under Chapter 51.28 RCW and will be used to facilitate the handling of your claim under Title 51 RCW.

This is your claim number: **AE 88129**

Keep this card handy when contacting us about your claim or to check if L&I has received your claim.

Name _____ Date of injury _____

Use this card to get medical services for the treatment of your work-related injury or occupational disease.

This card does not mean your claim has been allowed.

➤ Cut this card out. Keep it with you. ➤

Online, L&I's secure Claim & Account Center

Get the most up to date, complete information about your claim online at L&I's Claim & Account Center:
www.ClaimInfo.LNI.wa.gov

Check the status of a workplace injury

- * View claim documents and L&I's notes about the claim
- * See if a time-loss check has been issued
- * Find out if L&I has authorized treatment or paid a bill

Send information to L&I

- * Send us a secure message
- * Off work or returning to work? Update work status
- * Protest a claim decision
- * Change worker's address or phone

NOTE: Workers' compensation claims from employees of self-insured businesses and claims for crime victims are not available in the Claim & Account Center.

Technical Support Assistance:

call 1-360-902-5999
e-mail websupport@LNI.wa.gov

How to get help

Call any L&I field office. They are listed in your local phone book under Washington State, Labor and Industries.

ABERDEEN	EAST WENATCHEE	MOSES LAKE	SPOKANE	VANCOUVER
BELLINGHAM	EVERETT	MT VERNON	TACOMA	YAKIMA
BREMERTON	KENNEWICK	PORT ANGELES	TUKWILA	
COLVILLE	LONGVIEW	SEATTLE	TUMWATER	

L&I claim information:

Easy-Access Line: 1-800-831-5227
Information Helpline: 1-800-547-8367
Information Online: www.lni.wa.gov

APPENDIX 4



TIME-LOSS NOTIFICATION

Unit	Work Position
Claim Number	
Date of Request	
Date of Injury	

Worker instructions: This is your request for time-loss compensation, which must be completed by you AND your doctor before we can consider you for benefits. If you are unable to work due to your workplace injury AND your employer is not paying your full wages:

- 1.) Fill in your section of the form, sign and date.
- 2.) Take it to your doctor to complete.

Doctor instructions: After completing this form, please sign and mail to the above address.

Worker's Statement

I did not perform any work, paid or unpaid, due to a work-related injury/illness from _____ to _____. This includes, but is not limited to, self-employment, COPES or CHORE Services. Did you engage in other work type activities such as volunteer work? Yes No If so, please describe:

I will/did return to work on _____	I am now working _____ Hours/Day	I am now working _____ Days/Week	My current wage is: \$ _____ per <input type="checkbox"/> Hour <input type="checkbox"/> Day <input type="checkbox"/> Week <input type="checkbox"/> Month
------------------------------------	----------------------------------	----------------------------------	---

I have applied for the following benefits: None Unemployment Food stamps only Other public assistance programs Social Security benefits

On the date of your injury, was your employer paying any part of your and/or your family's medical, dental and/or vision insurance benefits, or providing housing, board and/or fuel (utilities)? Yes No

Are you still receiving these benefits? Yes No Date coverage ended _____

By signing below, I am certifying the following: I understand that if I make a false statement about my activities or physical condition, I will be required to refund my benefits and I may face civil or criminal penalties. I understand I must immediately contact my claim manager if I perform any work (paid or unpaid), if my doctor releases me for work, if I am incarcerated and under sentence, or if the custody of my children changes.

Phone # _____ Date _____ Worker's signature _____

Doctor's Statement

Diagnosis due to workplace injury or illness: _____

I certify this patient, because of the above condition, has been unable to perform any type of work activity – paid or unpaid – from _____ to _____

This patient is released for work on: _____ -OR- I expect to release this patient to return to work on: _____

List the objective medical findings that show this patient is unable to work because of this work-related condition: _____

Please list your *specific restrictions* for this patient, due to this injury: _____

Are these restrictions: <input type="checkbox"/> Temporary <input type="checkbox"/> Permanent <input type="checkbox"/> Undetermined	Has the patient's condition(s) due to this injury reached maximum medical improvement? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Undetermined
---	---

Will permanent impairment result from this injury? Yes No Undetermined

Remarks _____

Physician's name (print or type)	Provider account #	Phone #
Address	City	State ZIP+4
Date	Physician's signature	



NOTIFICACIÓN DE TIEMPO PERDIDO

Unit	Work Position
Número del reclamo	
Fecha de la solicitud	
Fecha de la lesión	

Instrucciones para el trabajador: Esta solicitud para la compensación por tiempo perdido, tiene que ser completada por Ud. y su doctor antes de poder considerarla para recibir beneficios. Si debido a la lesión sufrida en su trabajo, no puede trabajar y su empleador no le está pagando su salario:

- 1.) Complete la declaración del trabajador, la fecha y su firma.
- 2.) Llévelo el formulario a su médico para que complete la declaración del doctor.

Instrucciones para el doctor: Después de completar este formulario, por favor firmelo y envíelo a la dirección de arriba.

Declaración del trabajador

Debido a una lesión/enfermedad ocupacional relacionada con el trabajo, no he trabajado ni he podido trabajar desde ___/___/___ hasta ___/___/___ (Es decir, Ud. no ha realizado **ningún** trabajo – remunerado o sin remunerar – (mes, día, año) tales como trabajo voluntario, empleo por cuenta propia o por servicios sociales (COPEs o CHORE).

Regresé/regresaré a trabajar el día ___/___/___

Estoy trabajando ____ Horas/Día	Estoy trabajando ____ Días/Semana	Mi tarifa de pago es: \$ _____ dólares por <input type="checkbox"/> Hora <input type="checkbox"/> Día <input type="checkbox"/> Semana <input type="checkbox"/> Mes
------------------------------------	--------------------------------------	---

He solicitado los siguientes beneficios: Ninguno Estampillas para la comida solamente Beneficios del seguro social Desempleo Otros programas de asistencia pública

En el día que se lesionó, ¿Estaba su empleador pagando alguna parte del seguro médico, dental y/o de la vista de Ud. y/o su familia? o ¿Le proveía vivienda, comida y/o combustible (servicios públicos)? Sí No

¿Continúa recibiendo estos beneficios? Sí No Fecha en que terminaron los beneficios ___/___/___

Con mi firma estoy certificando que: Entiendo que si hago una declaración falsa sobre mis actividades o mi condición física, tendré que devolver mis beneficios y podría afrontar sanciones civiles o criminales. Entiendo que tengo que comunicarme de inmediato con mi gerente de reclamo, si realizo cualquier tipo de trabajo (remunerado o no), si mi doctor me da de alta para trabajar, si estoy encarcelado o si hay algún cambio en la custodia legal de mis hijos.

Nº de teléfono _____ Fecha _____ Firma del trabajador _____

Declaración del doctor

Diagnóstico por lesión o enfermedad ocupacional relacionada con el trabajo

Por la condición mencionada arriba, yo certifico que este paciente no ha podido realizar ningún trabajo - remunerado o no - Desde ___/___/___ hasta ___/___/___

Este paciente puede regresar a trabajar el día: / / - O - Espero darle de alta para regresar a trabajar el día: / /

Enumere los resultados médicos objetivos demostrando que este paciente no puede regresar a trabajar debido a esta condición relacionada con el trabajo.

Por favor escriba sus **restricciones específicas** para este paciente debido a esta lesión:

Estas restricciones son: Temporales Permanentes Indeterminadas ¿ Ha mejorado lo máximo posible la condición(es) del paciente debido a esta lesión? Sí No Indeterminado

¿Resultará una incapacidad permanente de esta lesión? Sí No Indeterminado

Comentarios

Nombre del doctor (escriba con letra de molde o a máquina) _____ Número de cuenta del proveedor _____ Nº de teléfono _____
 Dirección _____ Ciudad _____ Estado _____ Código postal _____

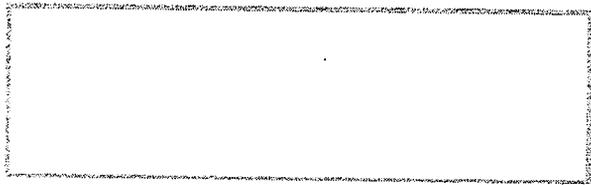
Fecha _____ Firma del doctor _____

APPENDIX 5



WORKER VERIFICATION FORM

Unit	Work Position
Claim number	
Date of request	
Date of injury	



Instructions to worker: This is your request for time-loss compensation. This must be completed before we can consider you for benefits. If you are unable to work due to your workplace injury AND your employer is not paying your full wages: 1) Complete this form 2) Sign and date 3) Mail it to the address above within 14 days of the date you received this mailing.

Name	Phone number	
Address		
City	State	ZIP

Fill in ONLY if you have a new address and/or phone number.

Worker's Statement

I did not perform any work, paid or unpaid, due to a work-related injury/illness from _____ to _____. This includes, but is not limited to, self-employment, COPES or CHORE Services. Did you engage in other work type activities such as volunteer work? Yes No If so, please describe: _____

I will/did return to work on _____	I am now working _____ Hours/Day	I am now working _____ Days/Week	My current wage is: \$_____ per <input type="checkbox"/> Hour <input type="checkbox"/> Day <input type="checkbox"/> Week <input type="checkbox"/> Month
------------------------------------	----------------------------------	----------------------------------	--

I have applied for the following benefits: None Food stamps only Social Security benefits
 Unemployment Other public assistance programs

On the date of your injury, was your employer paying any part of your and/or your family's medical, dental and/or vision insurance benefits, or providing housing, board and/or fuel (utilities)? Yes No

Are you still receiving these benefits? Yes No, date coverage ended _____

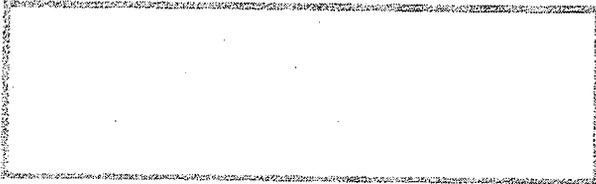
By signing below, I am certifying the following: I understand that if I make a false statement about my activities or physical condition, I will be required to refund my benefits and I may face civil or criminal penalties. I understand I must immediately notify my claim manager if I perform any work (paid or unpaid), if my doctor releases me for work, if I am incarcerated and under sentence, or if the custody of my children changes.

Phone #	Date	Worker's signature
---------	------	--------------------



FORMULARIO DE VERIFICACIÓN DE EMPLEO

Unit	Work Position
Número del reclamo	
Fecha de la solicitud	
Fecha de la lesión	



Instrucciones para el trabajador: Esta es su solicitud para compensación por tiempo perdido. Tiene que completarla antes que podamos considerarlo para recibir beneficios. Si no puede trabajar debido a la lesión sufrida en su trabajo y su empleador no le está pagando su salario completo: 1) Complete este formulario 2) Fírmelo y escriba la fecha 3) Envíelo a la dirección arriba dentro de 14 días a partir de la fecha en que recibió esta correspondencia.

Nombre	Número de teléfono	
Dirección		
Ciudad	Estado	Código postal

Llene esta casilla solamente si tiene una dirección y/o número de teléfono nuevo.

Declaración del trabajador

Debido a una lesión/enfermedad ocupacional relacionada con el trabajo, no he trabajado con pago o sin pago desde _____ hasta _____. Esto incluye pero no se limita a: empleo por cuenta propia o por servicios sociales (mes, día, año)

COPEL o CHORE. ¿Ha trabajado en otro tipo de actividades tales como trabajo voluntario?

Sí No Por favor describa:

Regresé/regresaré a trabajar el día _____	Estoy trabajando _____ Horas/Día	Estoy trabajando _____ Días/Semana	Mi tarifa de pago es: \$ _____ dólares por <input type="checkbox"/> Hora <input type="checkbox"/> Día <input type="checkbox"/> Semana <input type="checkbox"/> Mes
---	----------------------------------	------------------------------------	---

He solicitado los siguientes beneficios: Ninguno Estampillas para la comida solamente Beneficios del seguro social Desempleo Otros programas de asistencia pública

En el día que se lesionó, ¿Estaba su empleador pagando alguna parte del seguro médico, dental y/o de la vista de Ud. y/o su familia? o ¿Le proveía vivienda, comida y/o combustible (servicios públicos)? Sí No

¿Continúa recibiendo estos beneficios? Sí No Fecha en que terminaron los beneficios _____

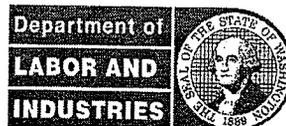
Con mi firma estoy certificando que Entiendo que si hago una declaración falsa sobre mis actividades o mi condición física, tendré que devolver mis beneficios y podría afrontar sanciones civiles o criminales. Entiendo que tengo que comunicarme de inmediato con mi gerente de reclamo, si realizo cualquier tipo de trabajo (remunerado o no), si mi doctor me da de alta para trabajar, si estoy encarcelado y bajo sentencia o si hay algún cambio en la custodia legal de mis hijos.

Nº de teléfono	Fecha	Firma del trabajador
----------------	-------	----------------------

APPENDIX 6

Workers' Guide to

Industrial Insurance Benefits



Guide to Benefits

This is your guide to industrial insurance benefits. It explains the benefits available to you if you are injured on the job or develop an occupational disease. These benefits vary, depending on the injury. They can include paid health care, wage replacement and other services to aid you in your recovery and return to work.

If you are injured on the job in Washington, you are insured by the Washington State Fund, unless you are employed by one of the approximately 400 employers who are self-insured. (L&I publishes a different guide for workers employed by self-insured businesses.) If your claim is accepted, the benefits and level of service to which you are entitled are set by the state Legislature and administered by the Department of Labor and Industries. Our goal is to provide quality services to help you recover and return to work as soon as possible.

This guide summarizes what happens when you file a claim, and how you can help make the process work smoothly for you. It also explains your rights and responsibilities, and tells you what choices you have if you disagree with a decision. This booklet, however, is not a legal interpretation of the law.

Information is current as of June 2006.
Updates will be added as changes occur.

For more information:

Visit the web
InjuredWorker.LNI.wa.gov

Call L&I's toll-free information line
1-800-LISTENS (1-800-547-8367)

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What is Industrial Insurance?

Whether an injured worker is covered by L&I's Washington State Fund, or a self-insured employer, he or she is entitled to no-fault accident and disability coverage.

This "industrial insurance" covers medical expenses and pays a portion of wages lost while a worker recovers from a workplace injury. Insurance

L&I benefits are for job-related injuries only.

premiums paid by both workers and employers finance these benefits.

Unlike other types of insurance, L&I can cover injuries only if they happen at a definite time and place at work. Also, claims for occupational diseases are accepted *only* if your work and medical history shows you have an illness or infection that was directly caused by the work you do, and not by something else.

We all work hard to prevent accidents that result in injuries or exposure to hazardous substances that may cause occupational diseases. Still, nearly 175,000 work-related injuries and occupational diseases are reported to L&I each year. Another 64,000 on-the-job injuries and diseases are reported each year to self-insured companies.

If you suffer an on-the-job injury or occupational disease, we encourage you to maintain contact with your employer. Let your employer know how you are doing. If you are unable to return to your old job for a while, talk to your employer about lighter-duty work you may be able to do during your recovery. Many return-to-work options may be pursued. Some are outlined in this guide. Read it and know your rights.

If you believe the decision is wrong, you may protest it to L&I. You also have the right to appeal directly to the Board of Industrial Insurance Appeals (Board) without first protesting to L&I. You do not need to hire an attorney for a protest or appeal, but you may if you choose to do so.

Protest to L&I

You must send a written protest within 60 days of receiving L&I's decision. Try to explain in detail why you think the decision is unfair, and supply any additional information you think may help us in our evaluation. Mail your protest to the Claims Section, PO Box 44291, Olympia, WA 98504-4291.

We will review your claim and send you a written decision in response to your protest. If you disagree with this decision you may appeal in writing to the Board.

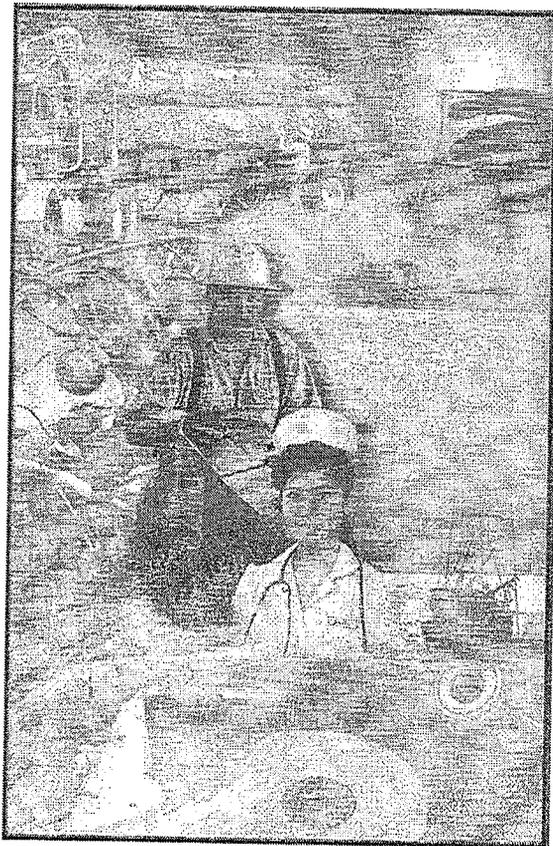
Appeal to the Board after protest to L&I

You must send your appeal to the Board within 60 days of receiving L&I's decision. Write to: Board of Industrial Insurance Appeals, 2430 Chandler Ct. SW, PO Box 42401, Olympia, WA 98504-2401. The Board's phone number is (360) 753-6823 or 1-800-442-0447 (in-state toll-free line).

The Board, which is independent of L&I, conducts hearings on claim issues that cannot otherwise be settled to the satisfaction of you, your employer or the department. The Board issues a written decision about your case after personal arguments and testimony have been taken. This decision may be appealed to a Washington State Superior Court. For more detailed information, ask the Board for its pamphlet, *Your Right to be Heard*.

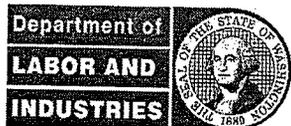
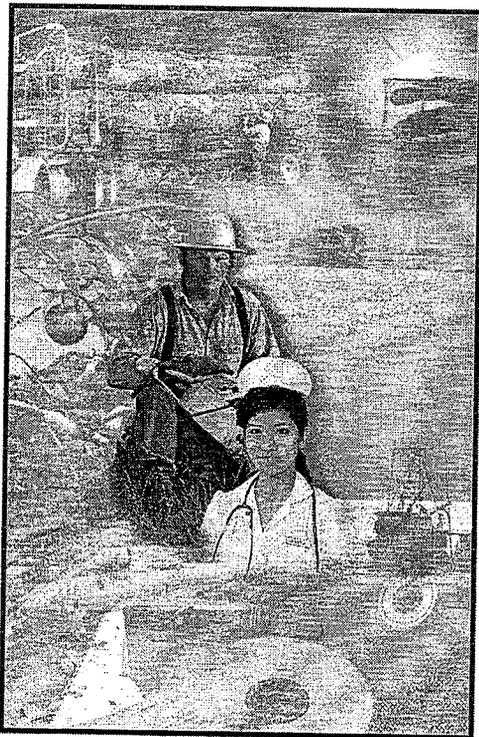
Guía de los trabajadores

para los beneficios
de seguro industrial



Руководство для работников

по выплатам промышленного страхования



Руководство по страховым выплатам

Это ваше руководство по выплатам промышленного страхования. Оно предоставляет объяснение страховых выплат, которые вы можете получить, если вы получили трудовое увечье или профессиональное заболевание. Выплаты зависят от вида увечья. Они могут включать оплату медицинского обслуживания, возмещение зарплаты и другие услуги, для того чтобы помочь вам выздороветь и вернуться на работу.

Если вы получили трудовое увечье в штате Вашингтон и вы не работаете на одного из приблизительно 400 работодателей, у которых есть самострахование, вы застрахованы Фондом штата Вашингтон. (Отдел труда и промышленности (L&I) публикует отдельное руководство для работников предприятий, имеющих самострахование). Если ваш иск принят, положенные вам выплаты и уровень обслуживания, установлены законодательным органом штата и предоставляются Отделом труда и промышленности. Наша цель — предоставить качественные услуги, чтобы помочь вам выздороветь и вернуться на работу в кратчайший срок.

В этом руководстве вкратце изложено, что происходит, когда вы подаете иск и что вы можете сделать, для того чтобы процесс оформления прошел без проблем. Руководство также дает объяснение ваших прав и обязанностей и извещает вас о том, какой у вас есть выбор, если вы не согласны с каким-либо решением. Настоящая брошюра, однако, не является юридическим толкованием закона.

Информация актуальна на март 2005 г. Будет обновляться по мере внесения изменений.

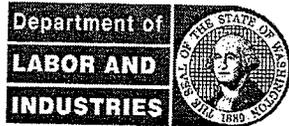
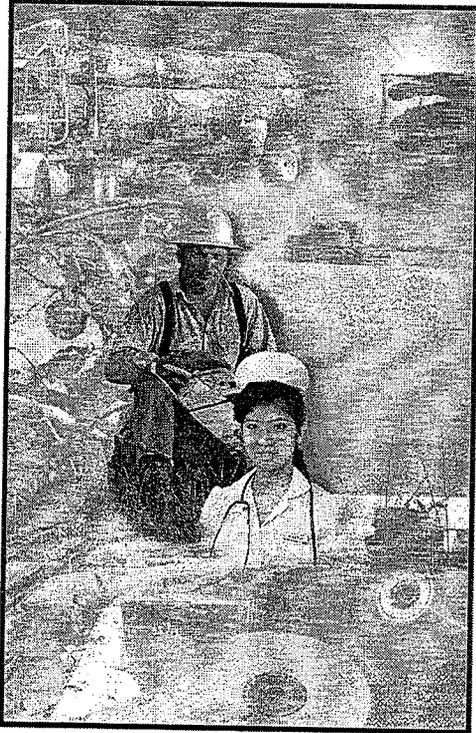
**Если вам нужна
дополнительная информация:**

Смотрите сайт по адресу:
InjuredWorker.LNI.wa.gov

Звоните в бесплатную информационную
службу Отдела труда и промышленности
1-800-LISTENS (1-800-547-8367)

Tập Hướng Dẫn Công Nhân về

Các Quyền Lợi Bảo Hiểm Kỹ Nghệ



Tập Hướng Dẫn về Các Quyền Lợi

Đây là tập hướng dẫn cho quý vị về các quyền lợi bảo hiểm kỹ nghệ. Tập này giải thích các quyền lợi dành cho quý vị nếu bị thương khi làm việc hoặc bị bệnh liên quan đến nghề nghiệp. Các quyền lợi này khác nhau tùy theo thương tích. Sổ này có thể gồm đài thọ dịch vụ chăm sóc sức khỏe, bồi hoàn lương và các dịch vụ khác để giúp quý vị bình phục và trở lại làm việc.

Nếu quý vị bị thương khi đang làm việc tại Washington, quý vị được Quỹ Tiểu Bang Washington bảo hiểm, trừ phí quý vị làm việc cho một trong khoảng 400 hãng sở tự bảo hiểm. (L&I ấn hành một tập hướng dẫn khác cho công nhân làm việc cho các cơ sở tự bảo hiểm.) Nếu đơn của quý vị được chấp thuận, mức quyền lợi và dịch vụ quý vị được hưởng là do Lập Pháp tiểu bang ấn định và Bộ Lao Động và Kỹ Nghệ điều hành. Mục tiêu của chúng tôi là cung cấp các dịch vụ có phẩm chất để giúp quý vị hồi phục và trở lại làm việc càng sớm càng tốt.

Tập hướng dẫn này tóm lược sự việc khi quý vị nộp đơn xin, và cách quý vị có thể giúp cho tiến trình được xuôi sẻ cho quý vị. Tập này cũng giải thích về các quyền và trách nhiệm của quý vị, và cho biết quý vị có các chọn lựa gì nếu không đồng ý về một quyết định. Tuy nhiên, tập sách này không phải để diễn giải luật pháp.

Chi tiết mới nhất vào Tháng Ba 2005.
Sẽ có thêm cập nhật khi có thay đổi.

Muốn biết thêm chi tiết:

Hãy đến web
InjuredWorker.LNI.wa.gov

Gọi đường dây thông tin miễn phí của L&I.
1-800-LISTENS (1-800-547-8367)

APPENDIX 7

3. Calls the requesting person to notify him or her that interpretive services are authorized, and give a reminder that interpreters will not be reimbursed without an L&I provider number for interpretive services.
4. Sends the medical and/or vocational provider a letter (see Attachment 10.30-A) confirming the authorization, with copies to the worker, employer, and interpreter, if known.
5. On AUTH, enters the appropriate interpreter services package code, including the date span for the period authorized.

Package 115	Interpreter Services / Package includes all medical and vocational interpretive services
Package 116	Interpreter Services / IME "No Shows"

6. Periodically reviews the need for interpretive services.

IF DENYING INTERPRETIVE SERVICES:

7. Documents the phone calls and decision and marks a "Y" to send a copy to the file.
8. Calls the requesting person to notify them of the denial and explain the reasons.
9. Sends the worker a letter confirming the denial and explaining the reasons. Sends copies to the attending doctor, vocational counselor (if assigned), employer and interpreter, if appropriate.
10. On AUTH, denies the appropriate interpreter services package code, and includes the appropriate date spans.

Package 115	Interpreter Services / Package includes all medical and vocational interpretive services
Package 116	Interpreter Services / IME "No Shows"

11. On CLOG, creates a message that interpretive services have been denied and the reason for the denial.

TASK 10.30-B

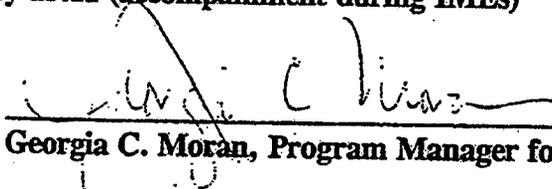
MEDICAL TREATMENT ADJUDICATOR

Section: Provider Information **Effective:** 9-1-98

Title: Paying for Interpretive Services **Cancels:** None

See Also: WAC 296-23-165 (miscellaneous services)
WAC 296-23-255 (conditions for accompaniment)
Policy 13.11 (accompaniment during IMEs)

Approved by:



Georgia C. Moran, Program Manager for Claims Administration

When receiving a bill for interpretive services, the medical treatment adjudicator:

1. Verifies that the bill includes all required records:
 - Worker's name
 - Claim number
 - Language of interpretation
 - Date(s) of service provided
 - Name of medical or vocational services provider
 - Purpose of provider appointment
 - Medical or vocational provider's signature
 - Interpreter's signature
- 1a. If the bill is incomplete, returns the bill to the interpreter to complete and resubmit.
2. On LINIIS, verifies that the adjudicator has authorized interpretive services. If not, contacts the adjudicator to determine whether or not the service is authorized.
3. If the adjudicator authorizes the service, allows the payment.
 - 3a. If the adjudicator is not authorizing the service, denies the payment.

Letter Authorizing Interpretive Services

(date)

Claim Number:

(name of medical or vocational provider)
(address)

Dear (name of medical or vocational provider):

The department was recently notified that (worker's name) needs interpretive services to assist with medical or vocational appointments.

I am authorizing interpretive services provided by (interpreter's name and phone) from (date) to (date) only for medical or vocational services under this claim. If (worker's name) needs interpretive services beyond this time, please contact me for further authorization.

The department does not schedule interpreters for medical or vocational appointments. It is your responsibility to arrange for an interpreter for these appointments.

Sincerely,

(name), Claim Manager
(area code / phone number)

cc: Worker
Employer
Interpreter
(Medical or Vocational Provider: whichever is not the addressee)