



STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
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**To:** All Self Insured Employers and Third Party Administrators  
**From:** Jean M. Vanek, Self Insurance Program Manager  
**Subject:** **Further Clarification of WAC 296-15-430**

On April 1, 2006, WAC 296-15-430 went into effect which changed the return-to-work/vocational aspect of self-insured claims. This WAC replaced WAC 296-15-500 and WAC 296-15-510 which were repealed.

**What has changed?**

The most significant change was the removal of the “90-day rule” requiring self-insurers to submit an Employability Assessment Report (EAR) “no later than after paying ninety continuous days of time loss”. (WAC 296-15-500 (1) and (2)).

**What does the new rule say?**

- (1) When must a self-insurer submit an Employability Assessment Report (EAR) to the department?
  - a. Within five working days of the date time loss benefits are terminated because the worker is not eligible for vocational services.

NOTE: An EAR is not required if the worker is not eligible for vocational services because they returned or were released to work at the job at time of injury.

- b. Within five working days of when the self-insurer finds the worker eligible for vocational services.

**May the self-insurer wait to send an EAR to the department until after plan development is in progress?**

No. The self-insurer must send the EAR within five working days of finding the worker eligible for services.

**May the self-insurer first provide training to assist the injured worker in developing some skills and then submit an EAR recommending “able to work**

**based on transferable skills” without having first submitted an EAR indicating the worker is eligible for services?**

No. These activities are considered vocational services. The WAC requires submission of the EAR within five days of finding the worker eligible for vocational services.

**How does a self-insurer determine when the five working days period begins to run?**

The five days start the date that the self-insurer receives the medical and vocational documentation necessary to determine that the worker is either eligible or not eligible for vocational services.

**What is the reasoning behind the rule?**

When a self-insurer determines that a worker is eligible and likely to benefit from vocational services the department sends the worker a letter acknowledging their eligibility and provides information about their right to dispute the determination. Workers are deprived of their rights if the EAR is submitted to the department after services have already been provided.

**What else has changed?**

The requirements related to vocational plans in repealed WAC 296-15-510 are now part of new WAC 296-15-430 (2) through (6).

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

WAC 296-15-430 (2) requires the self-insurer to submit a vocational plan to the department with a copy to the worker within ten calendar days after being signed by the worker, vocational rehabilitation provider, and the employer.

**Is submission of a vocational rehabilitation plan necessary if the department has already sent a letter acknowledging the worker’s eligibility for services?**

Yes. The WAC provides only ten calendar days for submission of the vocational plan, with a copy to the worker after it has been signed by the worker, vocational rehabilitation provider, and the employer. After receipt of the vocational rehabilitation plan, the department sends a letter to the worker to acknowledge the plan and to provide information about how to request a review of the plan should a dispute arise.

**What is the reasoning behind this?**

WAC 296-15-430 (4) allows for a formal plan review by the department, but the request for review must be made prior to completion or termination of the plan. The worker will not be aware of their rights to request a review of the plan if the plan is complete or nearing completion before it is submitted to the department.

Cooperative efforts to follow the WACS are more likely to result in successful claim closures than cases in which workers feel they are being deprived of their rights or that they are forced to participate in retraining that they had no part in developing.

**What action is the department taking?**

Compliance with WAC 296-15-430 is now being monitored. In the future, violations may result in penalty assessments.

You can view WAC 296-15-430 in its entirety on our website at <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-15-430>