

Office of the Ombudsman for Self-Insured Workers



2009 Annual Report

Reporting Period:

January 12, 2009 – June 30, 2009

The Office of the Ombudsman advocates for the rights of injured workers of self insured employers by providing information, investigating complaints, and taking action to ensure the worker receives the appropriate benefits under industrial insurance law.

Denise McKay, Ombudsman



State of Washington
Office of the Ombudsman for Self Insured Injured Workers
Department of Labor and Industries
PO Box 44001 Olympia WA 98504-4001 • (888) 317-0493 • fax (360)902-4202

September 30, 2009

The Honorable Chris O. Gregoire
Honorable Members of the Legislature

I am pleased to submit the first annual report of the Office of the Ombudsman for Self-Insured Injured Workers (OSIIW), pursuant to RCW 51.14.400.

Our first few months of operation were dedicated to building a strong foundation for the program. Focus was given to developing the program, marketing our services, and creating positive working relationships with our stakeholders. We are happy to report the demand for our services is steadily increasing as our marketing and outreach efforts expand. This report provides an account of OSIIW activities from the date of my appointment, January 12, 2009, through June 30, 2009.

We appreciate the opportunity to serve as advocates for self-insured workers of Washington State.

Respectfully submitted,

Denise McKay
Ombudsman

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Executive Summary

The Office of the Ombudsman for Self-Insured Injured Workers (OSIIW) was established by the 2007 legislature to advocate for the rights of injured workers of self-insured employers. The authorizing legislation, SSB5053, requires the ombudsman to operate independently of Labor and Industries' Insurance Services Division, reporting to the agency director.

The ombudsman was appointed by the Governor on January 12, 2009. This report covers the time period January 12, 2009, through June 30, 2009. Future OSIIW reports will cover a fiscal year time period.

Our Role: Advocate for the Self-Insured Injured Worker

Through the ombudsman, self-insured workers have targeted access to claims assistance and information. Injured and ill workers have the support and assistance of knowledgeable and effective advocates who are able to work in partnership with self-insured employers, third party administrators and department adjudicators. We work to ensure the worker receives the appropriate benefits under the law.

Structuring the Office

The legislation provided for an Ombudsman and three additional staff. The office is funded by self-insured employers as part of their annual administrative assessment. The legislation allows for staffing adjustments based on workload demands. The initial allocation included funding for the ombudsman, two assistants to the ombudsman, and an administrative assistant.

Denise McKay was appointed to the ombudsman position effective January 12, 2009, by Governor Gregoire. Denise has over 18 years experience in workers' compensation, risk management, and return-to-work programs. The assistants to the ombudsman work directly with injured workers to provide information, resolve issues, and ensure they receive the appropriate benefits under the law. The first assistant to the ombudsman was hired in May 2009. An additional assistant will be hired this fall in response to the rapidly increasing demand for our services.

Marketing and Outreach

We are actively partnering with labor organizations and Project Help to increase awareness about our services. Project Help is a cooperative effort between the Washington State Labor Council, the state's business community, and the Washington State Department of Labor and Industries to provide information and assistance to state fund and self-insured workers.

By statute, the brochure outlining our services and providing contact information must be provided to the worker at the time an injury is reported. Our toll free number is printed on the required self-insurance posters, which must be displayed in an area accessible to all self-insured workers.

Responding to Worker Complaints

The Office of the Ombudsman received 100 requests for assistance during the first few months of operations. Of those requests, 63 required action or investigation by this office. The length of time to complete an action or an investigation can vary widely depending on the complexity of the issues and responsiveness of the parties involved. The cases remain under review and investigation until all issues are resolved, or the case is removed from our jurisdiction. Forty-three cases are active ongoing investigations as of June 30, 2009.

Our marketing efforts have resulted in a significant increase in the demand for our services. The number of incoming calls to our toll free line increased from 47 calls in May, to 201 calls in August. As of August 2009, we had 90 open active investigations.

We attempt to resolve the worker complaints by first contacting the self-insured employer or third party administrator. It is advantageous to all parties to resolve issues at the lowest possible level, without need for action or intervention by the department or the judicial system. Referral procedures were established to refer the complaints to the Department of Labor and Industries for action if resolution cannot be achieved with the employer. The department has taken swift action on all referrals to date.

In just a brief period of time, we have positively affected the lives of injured workers by working to correct wage calculations, secure time-loss benefits, and obtain medical treatment for a number of injured workers.

Recommendations to Improve the System

An important function of this office is to identify deficiencies in the workers' compensation system and to make recommendations for improvements. At this time, the office has insufficient data to make recommendations for enhancements or changes to the system. Our new tracking system is in the development phase. The new system will allow the office to capture data, monitor ongoing issues, and identify trends.

Office of the Ombudsman for Self-Insured Injured Workers

Authority

SSB5053, passed by legislation in 2007, established the Office of the Ombudsman for Self-Insured Injured Workers (OSIIW). The ombudsman must operate independently of Labor and Industries' Insurance Services Division, reporting to the agency director. The legislation included two options for establishing the ombudsman office either through a competitive contract, or appointed by the Governor for a term of six years. The ombudsman was appointed by the Governor on January 12, 2009.

The ombudsman function will contribute to the improved operation of Washington's workers' compensation self-insurance program and participants by making recommendations based upon analysis of claim issues.

Staffing

The Ombudsman position and staff (initially, an additional three positions) are funded by self-insured employers, as part of their annual administrative assessment. Through the ombudsman, self-insured workers will have targeted access to claims process assistance and information. Injured and ill workers will have the support and assistance of knowledgeable and effective advocates trained to work in partnership with self-insured employers, third party administrators and department adjudicators. We work to resolve claims issues promptly and appropriately.

Characteristics of this newly established office:

- Effective communication to workers about the availability of ombudsman services.
- Resource for accurate information on industrial insurance law.
- Dedicated, highly qualified staff to advocate for worker rights.
- Objective information-gathering and problem-solving.

Qualifications for the Self-Insurance Ombudsman

The legislation lays out the expected qualifications of the self-insurance ombudsman. Other skills and knowledge were identified after discussions with external stakeholders and internal Labor and Industries staff. These include training or experience in:

- Industrial insurance self-insurance.
- Dispute or problem resolution techniques, including investigation, mediation and negotiation.
- Strong personal commitment to education, access and fairness for all Washington workers.

- Significant experience and relevant education in the areas of workers' compensation (Title 51 RCW), other Washington laws (RCW) and rules (WAC), and public policy.
- Relevant experience with self-insured workers' compensation programs or program requirements.
- Demonstrated track record of successful outreach and public awareness.
- Training and experience in mediation, interest-based negotiating and dispute resolution.
- Superlative communication and interpersonal skills and ability to work with a broad spectrum of people including injured workers, employers, medical and vocational providers, worker and employer representatives, legislators, department adjudicators and executives.
- Judicial temperament and proven ability to handle high profile, contentious or emotionally-charged issues.
- History of, and commitment to, maintaining professional confidentiality.

Recruitment

The first decision of the Governor's Office and Labor and Industries concerned whether to engage in a competitive bid process to contract for ombudsman services, or to appoint an individual as the ombudsman who would hire other state employee staff. Several discussions with various stakeholders and interested parties took place during 2007 and the first half of 2008 to gather input on this decision. In addition, an initial recruitment and request for proposals was done in the fall of 2007 to determine the level of interest and response to both approaches. Ultimately, the decision was made to appoint an ombudsman.

Recruitment for the appointment occurred in August and September, 2008. Twenty-five individuals applied for the position, and 14 were referred to the initial interview panel based on their qualifications and letters of interest. The initial interview panel recommended three individuals to be interviewed by a final panel made up of representatives from the State Labor Council, Teamsters, Washington Self-Insurers Association, the Governor's Office, and Labor and Industries. The results of this panel's work were referred to the Labor and Industries' director, and ultimately to the Governor's Office in mid-December, 2008.

Denise McKay was appointed to the ombudsman position effective January 12, 2009, by Governor Gregoire. Denise has over 18 years experience in workers' compensation, risk management, and return-to-work programs. She has resolved complex issues one-on-one with injured workers and employers, and has gained the trust of customers she works with.

Self Insurance in Washington

Legislatively authorized in 1971, self-insurance is an alternative method of providing workers' compensation coverage for some of Washington's largest employers. It is a unique program in which the employer provides appropriate benefits to the injured worker.

Self-insurance is a long-term obligation by the employer to be responsible for the payment of benefits during the time that a claim is open. The employer remains liable for benefits in the event a claim is later reopened as provided in Washington's industrial insurance law. This remains the employer's responsibility whether the self-insurance certification is continued or voluntarily surrendered.

Labor and Industries oversees the provision of benefits to ensure compliance with the law and regulations and reviews the financial strength of the self-insurer to ensure that workers' compensation obligations can be met.

What are the basic requirements to qualify for self insurance?

- Firm must be in business for at least three years.
- Firm must have total assets of at least \$ 25 million.
- Firm must have a written accident prevention program that has been in place in Washington for six months prior to applying to self-insure.
- Current financial ratio (current Assets divided by current Liabilities) must be at least 1.3 to 1.
- Debt to net worth ratio cannot be greater than four to one.
- Firm must have positive earnings in two of last three years (including current year being positive) and overall positive earnings for the three-year period.

What types of businesses choose to self-insure?

Approximately 350 of Washington's largest public and private employers have opted to self-insure their workers' compensation obligations. These employers do business in approximately 15,000 locations throughout Washington, and they employ about 30% of Washington's workforce. L&I certifies these companies and monitors their performance to ensure their 830,000 workers receive the same level of injured worker benefits as workers covered by the state fund. L&I's self-insurance staff assists and trains self-insured employers on the application of Washington's workers' compensation laws. They provide policy and audit self-insured employers to determine if they are managing claims properly and complying with Title 51.

Are there unique characteristics of self-insured employers?

Self-insured employers represent all major industry groups and types. These companies tend to be large, operating in multiple locations, sometimes national, and are more likely to be unionized. Self-insured companies are also more likely to devote significant resources to formal safety programs and incentives. Their return-to-work programs are often more effective than smaller state fund employers, largely due to the number and diversity of available job options and light-duty assignments. Roughly 90% of self-insured employers contract with third party administrators for the day-to-day management of claims.

What percentage of all industrial insurance claims is attributed to self-insurance?

Claims filed by self-insured workers total approximately 32% of all industrial insurance claims. During calendar year 2008, approximately 61,000 self-insured claims were filed. One-third of these claims were for both medical and indemnity benefits (wage replacement and other disability payments). The remaining two-thirds were claims for medical treatment only.

What percentage of Project Help assistance is directed to self-insured workers?

Project Help is an advocacy service provided through the Washington State Labor Council, in partnership with Labor and Industries. Although self-insured workers file only 32% of all industrial injury and illness claims, Project Help call logs

reveal approximately 50% of all calls received are from self insured injured workers.

What specific issues are the most common concerns and/or complaints for injured workers?

Whether a company is self-insured or covered through the state fund, all Washington workers are entitled to the same level of workers' compensation benefits.

Those benefits may include:

- Treatment for a work-related injury or illness paid for by the workers' compensation system.
- Benefits to partially replace lost wages if the injury or occupational disease prevents the worker from working.
- Vocational assistance if the worker qualifies to be retrained in order to return to some work.
- Partial disability benefits to compensate for the permanent loss of bodily function.
- A disability pension if the worker is permanently disabled from any gainful employment.
- Death benefits for survivors if the worker dies as the result of an industrial injury or disease.

Frequently, a single claim will involve multiple issues. Dissatisfaction with independent medical exams (IMEs), claim allowance, delay in treatment or benefits, and claim closure decisions are among the most frequently cited worker concerns and issues.

The Role of the Ombudsman

The Office of the Ombudsman advocates for the rights of injured workers of self-insured employers by providing information, investigating complaints, and taking action to ensure the worker receives the appropriate benefits under industrial insurance law.

A key feature of the office is our independence. We track complaints received, document outcomes, and analyze the data from a trending perspective. We report our findings in an annual report to the Governor, using the information to make recommendations for changes and improvements to the system.

Building the foundation

Our initial efforts were devoted to developing a strong foundation to ensure a successful launch of the program. Focus was given to staffing, establishing stakeholder relationships, defining and developing program objectives.

Staffing the Office

The first Assistant to the Ombudsman was hired on May 18, 2009. The Assistant is a certified claims administrator with a strong background in self-insurance and outstanding customer service skills. In just a brief period of time, she has proven her ability to positively affect the lives of injured workers by working to correct wage calculations, obtain back time-loss payments, secure payments for medical bills, and obtain treatment for a number of injured workers.

The number of worker calls and request for assistance is increasing on a daily basis, and is expected to significantly increase over the next month due to marketing and outreach efforts. Additional staff will be hired as the caseload warrants.

Partnering with Project Help

We are working closely with Project Help to coordinate our efforts to help injured workers. We are exploring the possibility of sharing a tracking system to allow for consistency in data collection for state fund and self insured worker issues.

Goals and Objectives

Our objectives are to develop an effective advocacy program for injured workers of self-insured employers, and provide excellent customer service by responding to injured worker complaints in a timely and professional manner. To support the achievement of these objectives, our focus is on the following key activities: researching other ombudsman offices and models; establishing relationships with stakeholders; developing a comprehensive marketing and outreach plan; developing a tracking system to gather and analyze data; establishing procedures to ensure workers receive excellent customer service.

Research and explore other ombudsman offices and models

We connected with each of the following well-established ombudsman offices, reviewing their mission, organizational structure, and operating philosophy: The University of Washington, Office of the Education Ombudsman, Ombudsman for Children and Family Services, King County Ombudsman and the Oregon Workers Compensation Ombudsman. While all of those offices have a different mission, each offered valuable insight on the development of a successful program.

Establish relationships with stakeholders

Labor organizations, employers, and third party administrators (TPA) all play a critical role in the claims process. Establishing positive working relationships with stakeholders is essential to resolving worker issues as quickly as possible.

Labor organizations are very supportive of the ombudsman office, and are key players in our marketing and outreach efforts. We relied on input from labor in the development of our worker brochures, and will continue to seek their input and feedback as the program develops.

An advisory group with representatives from labor and the self-insured community will meet quarterly, beginning in December 2009, to discuss relevant issues and offer solutions.

To date, we've met with self-insured employers and TPA firms representing 105 self-insured employers to outline the program and expectations.

Develop a comprehensive communications, marketing, and outreach plan

As a new program, we must make employees of self-insured businesses aware of our services. We have a toll-free number (1-888-317-0493) for injured workers. Our contact information appears on the required self-insurance posters, which must be posted at every work location. Self-insured employers are required to provide a copy of our program brochure to every injured worker at the time an injury is reported. The content and design of our brochure was stakeholdered with representatives from several union organizations, injured workers, and Project Help for content and clarity. We have received positive feedback about the brochure from workers, labor representatives and self insured employers.

We continue to work with labor organizations, Project Help, and the self insured employer community to increase program awareness and promote our services.

Develop a tracking system

We are developing a tracking system to capture and report information concerning the types of claims issues received from injured workers. Complaints will be tracked by employer, third party administrator (if applicable), the number and type of issues reported, and the outcome of the complaint.

The system is expected to be fully functional by December 2009. At that time, data collected since the inception of the program will be added to the new system. This system will be used to document referrals, track issues, and identify trends.

The next reporting period will include sufficient information to identify emerging issues and to make recommendations for future changes to the system.

Establish referral procedures for complaints

Statute requires the office of the ombudsman to develop referral procedures for complaints by workers of self-insured employers.

The department is to act as quickly as possible on any complaint referred to them by the Office of the Ombudsman. If the worker issue or complaint cannot be resolved at the employer level, procedures are in place to make a referral to the Department of Labor and Industries Self-Insurance Program for action. The department has responded quickly to all referrals to date.

Focus on customer service

Injured workers rely on industrial insurance benefits for medical treatment and wage replacement. The laws and rules governing industrial insurance are complicated and often confusing for the average worker. As advocates, one of our roles is to provide information and respond to worker questions about industrial insurance. An important function of this office is explaining the claims process and ensuring the worker understands their rights and responsibilities under the law.

Workers have access to the Ombudsman through our toll free number. We respond to the initial worker inquiry within two business days. We listen to the concerns of the workers, identify the issues, and work to resolve their complaint as quickly as possible. If the issues require further investigation, we notify the worker and tell them what to expect. We maintain contact with the worker and involve them in the resolution process.

Responding to Worker Issues

Referrals to the program are coming from a variety of sources, including legislative offices, attorney offices, unions, and by word-of-mouth. Sixty-three of the 100 calls received required an investigation and action by the ombudsman office. Of those, 43 are ongoing investigations. The time to complete an investigation can vary from a few days to several weeks depending on the complexity of the issues and the time it takes to obtain the necessary information. During the first few months of operation, we worked to secure over \$106,000 in overdue time-loss compensation benefits for seven workers, and obtained current medical and time-loss benefits for eleven injured workers.

What specific issues are the most common concerns and/or complaints for injured workers?

The majority of claims are adjudicated without delays or issues. The cases received by the ombudsman office for assistance and investigation are most often those where significant problems have developed. With our limited data it would be premature to make any assumptions at this time, but we can relay issues that are often reported.

Frequently reported issues:

- Delayed or denied payment of time loss benefits.
- Delayed or denied medical treatment.
- Claim closure before medical stability.
- Non-payment of medical bills.
- Lack of communication by the third party claims administrator.

Of particular concern is the non-payment or late payment of medical bills by the self-insured employer or third party administrator. We have received a number of complaints from injured workers who were sent to collections because the self-insurer did not pay the bill. This can be

devastating to anyone, but especially to those on an already reduced income. We work with the injured worker, provider, and employer to secure payment for the overdue bills.

We are making a difference

Injured workers rely on industrial insurance benefits for partial wage replacement and medical treatment. Workers receive 60-75% of their wage at the time of injury (up to a maximum), if medically certified as unable to work due to an accepted industrial injury or occupational disease. The actual percentage is determined by the worker's marital status and number of dependents. Any delay in time-loss benefits can be devastating for a worker already living on a reduced income. We receive calls from workers unable to pay for basic necessities; food, rent; gas. They are often desperate, and in urgent need of assistance.

Workers learn about our program through a variety of sources. We receive requests for services through legislative referrals, unions, word of mouth, and contacts made through our marketing materials and outreach activities. We are pleased to report an increasing number of our requests for assistance come via referrals from satisfied customers.

Success Stories

Delay in payment of time loss benefits

A legislative office called requesting assistance for an injured worker. For almost two years, the worker and the worker's attorney had made numerous requests to the third party administrator for payment of time loss benefits. No action was taken. We reviewed the claim and discovered the worker's time-loss benefits were incorrectly terminated in August 2007. At our request, an order was issued by L&I's self-insurance program directing the employer to pay **\$76,000 in past due time-loss compensation** benefits, and to refer the claim for a vocational assessment. The employer paid the back due benefits and the worker is receiving current benefits pending the vocational evaluation.

Delay in treatment authorization

A worker suffered a neck injury in 2007. All efforts at conservative medical treatment had failed, and surgery was the only recommended treatment option. The worker and his doctor have tried for **over a year to obtain authorization for surgery**. The TPA would not authorize surgery despite five concurring medical opinions. Finally, the worker was taken off work by his doctor as he could no longer function with the pain from his injury. Time loss benefits were not paid timely and a penalty order were issued for a delay in payment of time loss benefits. Ultimately, the surgery was authorized. This case continues to have ongoing issues with the payment of benefits. We will continue to monitor the claim.

Claim closure

A worker's claim was closed in March. Time loss had been terminated six months before and she was close to losing her home. Her doctor confirmed she needed surgery. At our request, L&I issued an order to reverse the closing of the claim and authorize surgery. The worker is now receiving appropriate benefits.

Delay in surgery authorization

A worker's physician tried unsuccessfully for over eight months to obtain surgical authorization to correct a very painful foot injury. All prior efforts at conservative treatment had failed. Surgery was the only treatment recommendation, yet the TPA refused to authorize the surgery. The worker was very frustrated and angry at the delay. At our request, the department issued an order directing the TPA to authorize the surgery.

We received this note of thanks:

Thank you for your assistance into bringing my claim to fruition. My pain and suffering will now soon be put to rest, thanks to your efforts.

Again, thank you for your time.

Unpaid medical bills

An injured worker called our office as she received notice from a collection agency. The medical provider referred her bills to collections because the self-administered employer did not pay injury related medical bills. We contacted the employer and medical provider to secure payment for the medical bills. The collections process was stopped.

This is her note:

Dear Kelli,

I would like to thank you for the quick response to my phone calls and letters concerning my L&I Self-Insured workers comp claim. Due to my employer's refusal to pay my medical bills I needed someone with authority who could resolve the unpaid bills. The self-insured claims examiner was refusing to pay the medical bills for over a year. After being turned over to collections and having unpaid bills on my credit you can imagine how happy I was to find that there was an appointed Ombudsman that could help. You have been so instrumental. I am on a limited income, hiring an attorney would have added even more financial stress. You graciously return my calls, acting quickly to get the bills that were overdue paid promptly. I really do not know what I would have done without you. I am very grateful for your assistance.

Delay in medical treatment

This worker called requesting medical treatment for her injury. As a school employee, she was anxious to receive medical care for her injury, and be back at work before school started.

Dear Kelli,

I wanted to thank you, and the agency you work through, for untangling this maze. Thanks to you, surgery is scheduled for September 9, 2009. Sooner if there is a cancellation. Let's keep in touch until this is over. If you hadn't gone to bat for me, I'd still be setting in a chair with my foot on a stool in ice packs. I'm ever so grateful for your intervention. Please stick around to help those that come behind me.

Medical treatment

A worker filed a claim for a low back injury. During a physical therapy session for her back condition, she suffered a significant neck injury. The worker contacted our office as treatment was not authorized for the neck injury. We secured the necessary medical information to document the neck injury. We contacted the TPA to requesting treatment for her neck, and to allow the neck injury as an accepted diagnosis. The TPA was not aware of the seriousness of neck injury, and responded quickly to our request. The worker received the appropriate treatment and recovered.

Recommendations for Change

As a new program, we do not have sufficient information to draw conclusions or offer any data driven recommendations for changes or enhancements to the workers compensation system. We will continue to monitor and track issues and complaints received. The next annual report will include a full year of data upon which to base any recommendations for system improvements.

There are several worker issues and complaints that we intend to monitor and follow closely over the next year. We will look for patterns by both employer and third party administrator.

- Delay in payment of time loss benefits.
- Delayed/denied medical treatment.
- Delayed payment of injury related medical bills.
- Penalties.

We are also interested in the application of RCW 51.28.050, the pay on appeal legislation. We have received several reports from workers of non-compliance with the legislation, and plan to monitor compliance with this legislation based on worker complaints. The information we gather will be shared with the Department of Labor and Industries.

How to Contact the Ombudsman's Office

If you or someone you know works for a self-insured employer and needs help with a workers' compensation issue, we are available to help.

Office of the Self-Insured Ombudsman
Department of Labor and Industries
7273 Linderson Way SW
PO Box 44001
Olympia WA 98504-4001
Phone: 1-888-317-0492
Fax: 360-902-4202

For more information on this report, please contact:

Denise McKay
Ombudsman
360-902-4818
hoos235@Lni.wa.gov