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Out-of-State Employers Participating in WA's State Fund Workers Compensation System:

Utilizing L&I's Retrospective Rating Program to Manage Risk and Save Money

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Abstract: Unlike most other States, employers doing business in Washington State must purchase their workers' compensation insurance through the State Fund system, unless electing the self-insured option. Only very large employers with high-risk tolerance select the self-insurance option. Out-of-state employers accustomed to a competitive insurance market are at a disadvantage when participating in Washington's system. This white paper will educate the out-of-state employer doing business in Washington on the Department of Labor & Industries Retrospective Rating Program (Retro) as an effective tool for reducing workers' comp costs and achieving refunds on premium paid.

Three specific areas must be addressed to effectively control workers' comp costs. First, and foremost, is ensuring employees go home safely every day by implementing a safety program to prevent accidents before they occur. Second, having a rudimentary understanding of how premiums are calculated and the impact of experience factors on those premiums in Washington, and lastly, participating in the L&I Retro program to achieve refunds on premiums.

Background: The key factor which makes Washington's State fund so different is the fact that it operates as a monopoly. The majority of claims filed in Washington are generated by a provider who certifies the worker was injured at a specific time and place or has an occupational disease, and L&I most likely approves the claim. This is a major difference from what most out-of-state employers experience where it is the employer who initiates the claim, and therefore able to navigate the claim to a controllable resolution.

Unlike traditional commercial workers' compensation structures where the claims adjuster is holistically responsible for adjudicating the claim from paying the bills to establishing the reserve, the Washington system compartmentalizes the responsibility by using an algorithm to set initial reserves. The system is not set-up to move claims efficiently through to closure and must be carefully monitored and managed through the Department's online claims platform. Additionally, the Department experiences high case-loads and turn-over of claims managers as it struggles to attract and retain a skilled workforce. As a result, the interpretation of rules is not predictable and can have negative consequences for the employer. The system is unlikely to change as the firmly entrenched political will in Washington does not appear to support open market competition.

Effectively Controlling Workers' Comp Costs: One of the benefits of Washington's system is the connection between the Department of Labor & Industries and the Department of Safety & Health (DOSH) in providing key safety analytics to help employers identify and improve safety conditions. Employers who have a top-down safety culture will undoubtedly be ahead of the game in controlling their workers' comp risk.

Washington sets workers' comp premiums based on its unique classification system. Additionally, **rates are based on hours worked rather than payroll**. As in most states, a company's experience factor determines their workers' compensation premiums. It is a number based on past claims that estimate what future claims are likely to cost. Employers have a three-year exposure to claims that determine their experience factor (for 2022 rates, the exposure is 2018, 2019 and 2020). Many employers focus on what is happening today, and it can be challenging to shift into understanding that a claim opened today will not financially impact the company for two more years and will affect rates for three years.

Washington's system caps the amount a company's experience factor can go up or down to 25% annually. For most employers, the maximum discount on premium will be 40% (.60 experience factor) from the base rate of 1, which is a significant reduction. However, larger employers who report a greater number of hours can decrease their experience factor to receive much larger discounts. Alternatively, companies who fail to control their cost can pay up to 10 times the base premium. Unique to Washington's system is the allowance of a medical discount to non-compensable claims (increases every year – in 2022 it is $3,450). If a claim is closed with costs under the medical-only discount amount, it will not impact the company's experience rate. L&I rewards employers who have zero or only medical claims within the three-year exposure period with a "claims-free" discount. Once a company has achieved the claims-free discount, an indemnity claim (compensable) will cause a company to lose the discount the following year.

Employers need to understand how each type of claim affects their insurance premium; otherwise, rates will escalate quickly, and it will take years to recover. It is financially beneficial to consider continuing to pay an injured employee's salary to keep their claim from negatively impacting the company's experience factor and, thus future rates.

Value of Participating in Retro: L&I established the Retro program about 26 years ago to financially incentivize employers for safety and returning injured employees back-to-work. It is a highly regulated program, which has proven to be lucrative for employers who are committed to following the rules each association establishes for participation in the group. The program operates much like a captive insurance program in that groups are homogeneously organized by risk class and sponsored by a trade association. The association is responsible for overseeing performance, removing companies negatively impacting the group, approving new members and distributing refunds. Once in a group, the employer's premium and losses will be aggregated into the group and losses developed together. At the time of adjustment, the groups losses will be compared to premium to determine the refund status.

One of the biggest benefits of participating in Retro is access to professional claims and risk management solutions. For many employers, this alone is enough of a reason to consider the program, as it provides a great cost control mechanism at a very low fee-for-service. Some associations manage their member's claims and retro services in-house, while others utilize a third-party administrator.

Each group, via the association decides its own fee structure, underwriting criteria, additional services, and how individual refunds are calculated and distributed. Refunds are distributed annually based on the groups "plan year". A company can join a group at the beginning of any quarter, (if they are not currently enrolled in a retro program) but can only leave a group at the end of their respective plan year.

Successful Retro Participation: Clearly understanding how to successfully participate in Retro is key to maximizing refund performance. Each time a claim is opened, a reserve is set which could impact a company's refund and the group's performance. It is important to have the claim closed or the reserve set as low as possible prior to the retro freeze date (date refund status is calculated). Retro coordinators with claims management experience are well versed in communicating and partnering with employers to help them manage claims to increase refund potential. Compensable claims with time-loss or Permanent Partial Disability (PPD) are reserved at a much higher rate than medical-only claims. Employers who utilize light-duty and Kept-on-Salary strategies are more likely to earn lucrative refunds. Retro coordinators help employers control their claims costs from recognizing red flags, ensuring occupation disease claims are adjudicated fairly, advising clients when it is time for legal intervention and performing financial analyses to help employers make the right decisions. Early intervention and communication are fundamental for a successful Retro participation outcome.

Retro Risk: Plan maximums and single loss limits are in place to reduce the risk of retro participation by capping the maximum group assessment if the group's losses exceed the premium. Currently, the maximum assessment is approximately 15%. Since claims go through three adjustment cycles, there is the possibility that an assessment in the first adjustment cycle could grow, decrease or be eliminated by the second or third adjustment.

Conclusion: When considering Retro participation, it is important to grasp that group administrators do their very best to control all the factors that could negatively impact the group from safety services, carefully monitoring claims, proactive management, strict underwriting guidelines, removing employers negatively impacting groups, and carefully vetting new members. The partnership employers enter when joining a group is taken very seriously by all parties – the member, the association and the claims administrator. Retro has been extremely lucrative for employers who are serious about controlling their workers' comp costs. The refund will vary from year to year depending on how the Retro group performs, and how your company performs within the group. The good news is Retro is thriving in Washington because groups have learned how to manage claims for maximum refund performance and have structured their participation requirements to align with best practices. Comprehensive workers' comp management utilizing retro as a key tool for keeping a company's premiums low on the front-end and earning lucrative refunds on the back-end is just good business.