



New hurdles for Washington employers seeking an IME to address a medical issue

By Jennifer Kramer ■ April 22, 2020

For those of you who may have heard rumblings that “preponderance IMEs” will no longer be permitted, recent statutory amendments in Senate Bill 6440 signed into law by Governor Inslee on March 27, 2020, confirm that the circumstances under which an independent medical examination (IME) can be requested will change to some degree.

Effective January 1, 2021, the current language used by RCW 51.32.110 (the statute that authorizes self-insured employers to request an independent medical examination, and obligates the worker to attend) and RCW 51.36.070 (the statute that references use of an examination when a “medical issue” arises) will change.

Currently a worker is required to attend a medical examination when asked to do so by the self-insured employer when that worker is receiving benefits, or claiming the right to receive benefits, under Title 51.¹ The statute will be amended to state that a worker must attend a medical examination, “[a]s **required under RCW 51.36.070.**” The new amendments to the statutes define the reasons that will justify an IME.

Today, the self-insured employer has authority to request an examination when deemed necessary to “resolve any medical issue.”² Practically speaking, when an attending provider disagrees with the opinions of an independent medical examiner, a “medical issue” arises. In that instance, a “second” IME is often used to address the resultant medical dispute.

However, the words “resolve any [medical issue]” will be removed from RCW 51.36.070 effective January 1, 2021, and additional language will be added, which specifies the circumstances under which IMEs are appropriate. An IME will be appropriate when the self-insured employer or Department deems it necessary to make: “(i) a decision regarding claim allowance or reopening, (ii) resolve a **new medical issue**, an appeal, or case progress, or (iii) evaluate the worker’s permanent disability or work restriction...”

A new definition will be added to define “new medical issue,” which will mean, “a medical issue **not covered by a previous medical examination requested by the department or the self-insurer** such as an issue regarding medical causation, medical treatment, work restrictions, or evaluating permanent partial disability.”³

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New Washington IME hurdles (continued)

The definition of “new medical issue” eliminates the option of a “second” IME when a previous IME addressed the same issues involving causation, treatment, work restrictions, and/or permanent partial disability. Key to the definition of “new medical issue” is the reference to “a medical issue **not covered by a previous medical examination ...**”

The statutory amendments allow an initial IME to address issues such as causation, treatment, work restrictions, and permanent partial disability, and should not foreclose an IME to address “case progress,” when there have been changes to the worker’s condition, including improvement and/or worsening based on the passage of time since the last IME. In addition, an IME will be considered appropriate to “resolve an appeal.” Still, these statutory changes may produce worker-resistance in terms of attending a “second” IME scheduled in close proximity to a previous IME if it can be argued that the “second” IME will address the same issues as the first.

The attorneys at Reinisch Wilson Weier PC are available to help with your questions about these future changes or any current case issues. ■

¹ RCW 51.32.110.

² RCW 51.36.070.

³ Senate Bill 6440, “Industrial Insurance Medical Examinations – Various Provisions,” 66th Legislature, 2020 Regular Session (Washington).

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