



Washington State Department of
Labor & Industries

Radiological Hazardous Waste Facility (RHWF) Presumption Claims

2023 Report

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Background

In 2018, the Washington State Legislature recognized that certain workers employed at the Hanford nuclear site are at an increased risk for multiple diseases and cancers because of exposure to hazards associated with nuclear waste. In response, RCW 51.32.187, regarding occupational disease presumption for Hanford site employees, was passed into law. The law presumes that certain enumerated diseases and conditions, if present in workers, are caused by their work and they are therefore eligible for benefits under the state's workers' compensation law.

During the 2019 Legislative session, HB 1490 passed and became effective July 28, 2019. It modified the requirement that the worker must have had a qualifying medical exam upon initial employment that did not show cancer to be eligible for a cancer diagnosis under the presumption. An exception to this requirement was added for workers that did not receive a pre-employment qualifying medical exam. This change increased the number of workers with cancer diagnoses who are eligible for benefits under the law.

Workers are entitled to benefits whether the employer is self-insured or insured under the state fund.

This law was further amended by SSB 5890, which was effective on March 11, 2022. This bill expanded the definition of those presumptively covered for workers' compensation from Hanford site workers to include workers at other radiological hazardous waste facilities, excluding military installations. It also slightly narrowed the diseases covered by the presumption.

The presumption covers exposed workers, defined as those working at a radiological hazardous waste facility for at least one 8-hour shift while covered under the state's industrial insurance laws, and includes workers conducting inspections of the facility.

The presumption applies to current and past exposed workers, as well as survivors of workers who have died from a condition covered under the presumption. The presumption lasts for the worker's lifetime. For exposed workers who have a covered disease or condition, there is a prima facie presumption that the disease or condition is an occupational disease under RCW 51.08.140.

Conditions covered in the law include:

- Respiratory disease, except communicable diseases
- Any heart problems experienced within 72 hours of exposure to fumes, toxic substances, or chemicals at the site
- Beryllium sensitization, and acute and chronic beryllium disease

- Neurological disease, except communicable diseases
- Various cancers including:
 - Leukemia
 - Lung cancer, primary or secondary
 - Bone cancer, primary or secondary
 - Renal (kidney) cancer, primary or secondary
 - Lymphomas, other than Hodgkin's disease
 - Waldenstrom's macroglobulinemia and mycosis fungoides
 - Primary cancers of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain (with exceptions), colon, ovary, liver (with exceptions)

The Department of Labor & Industries (L&I) is providing this report to the Legislature as required by RCW 51.32.1871. It provides the number of industrial insurance claims, which included the presumption for state fund and self-insured employers.

All data is current through June 30, 2023.

Data

CLAIMS FILED UNDER THE RHWF PRESUMPTION LAW

There have been 345 claims filed under RCW 51.32.187. Of those claims:

- 257 were filed with self-insured employers.
- 88 were filed with state fund employers.
- 212 were allowed, 124 were denied, and 9 are awaiting determination.
- 406 decisions were appealed to the Board of Industrial Insurance Appeals (BIIA) on 162 different claims; 182 appeals are still pending a decision from the BIIA.
- Of the 212 allowed claims:
 - 7 workers were awarded lifetime pension benefits.
 - 50 were fatality claims, none of which had been receiving pension benefits prior to the worker's death.
 - 45 family members were awarded survivor benefits, resulting in benefit payments totaling \$20,472,501. These payments include survivor pensions, death benefits, burial expenses, and time-loss pay owed to the worker prior to their death.
- 20 penalties were requested against self-insured employers, and 7 resulted in assessments totaling \$197,781. More than \$150,000 of this amount was from a single penalty for delay of compensation benefits.

Figure 1: Determinations of RHWF Presumption Claims (All claims)

	Allowed	Denied	Pending
Self-Insured	169	84	4
State Fund	43	40	5
Total	212	124	9

Figure 2: Determinations of RHWF Presumption Claims (Non-duplicate only)

Claims may be denied for administrative reasons that do not reflect the merits of the claim. Examples include self-insured worker claims made on a state fund report of accident form (or vice versa) and claims that are duplicates of existing claims in the system.

Figure 2 shows the determinations of RHWF claims with these removed to offer a more accurate picture of the claim allowance rate.

	Allowed	Denied	Pct. Allowed	Pct. Denied	Pending
Self-Insured	169	59	74%	26%	4
State Fund	43	20	68%	32%	5
Total	212	79	73%	27%	9

Figure 3: Claims filed by received date (calendar year)

Figure 3 shows the number of claims filed by the date they were received at L&I. Claims received prior to 2018 were still pending a decision by when the law went into effect, which enabled them to be considered under the presumption.

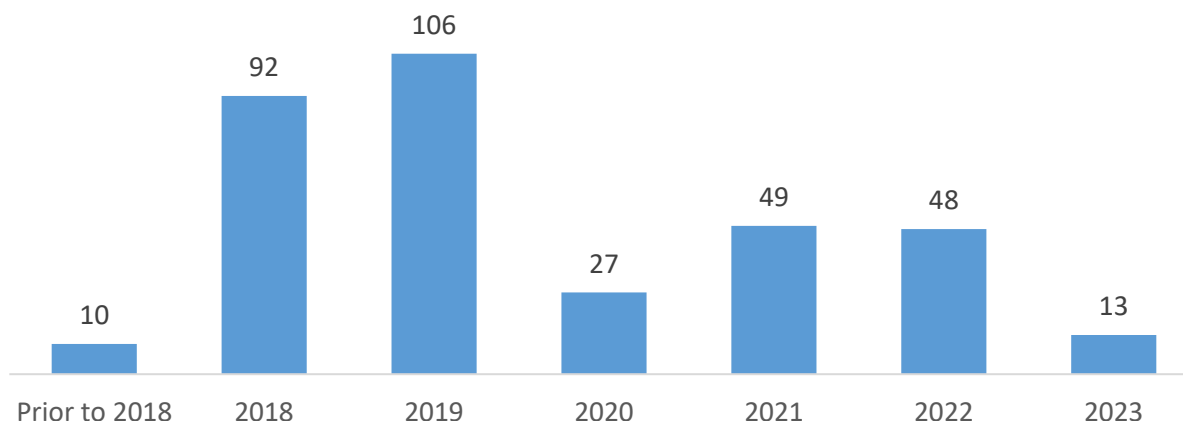


Figure 4: Number of Allowed RHWF Presumption Claims by Date of Manifestation

Figure 4 shows the number of allowed claims by date of manifestation.

The Date of Manifestation (DOM) is a date significant to industrial insurance claims for occupational disease. Unlike workplace injuries, which can be attributed to a definitive incident, occupational diseases can develop over time.

RCW 51.32.180 defines DOM for claims filed on or after July 1, 1988, as “...the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim.”

Most occupational disease claims have a two-year deadline for filing. The RHWF is retroactive, so the DOM for these claims ranges from 1959 to the present, with the majority being within the past 10 years.

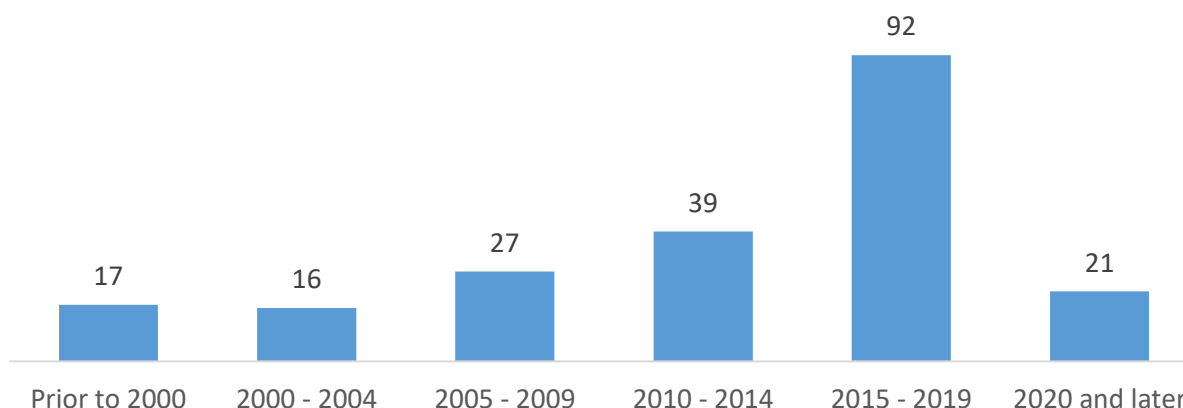


Figure 5: Reasons for Denial of RHWF Presumption Claims

As shown in Figure 1, there were a total of 124 claims denied. The specific reason for these denials is below in Figure 5. Despite the presumption created in the law, the most common denial was due to the condition not being a result of an industrial injury or illness. In many of these cases, the claims were for conditions not covered under the law, such as melanoma.

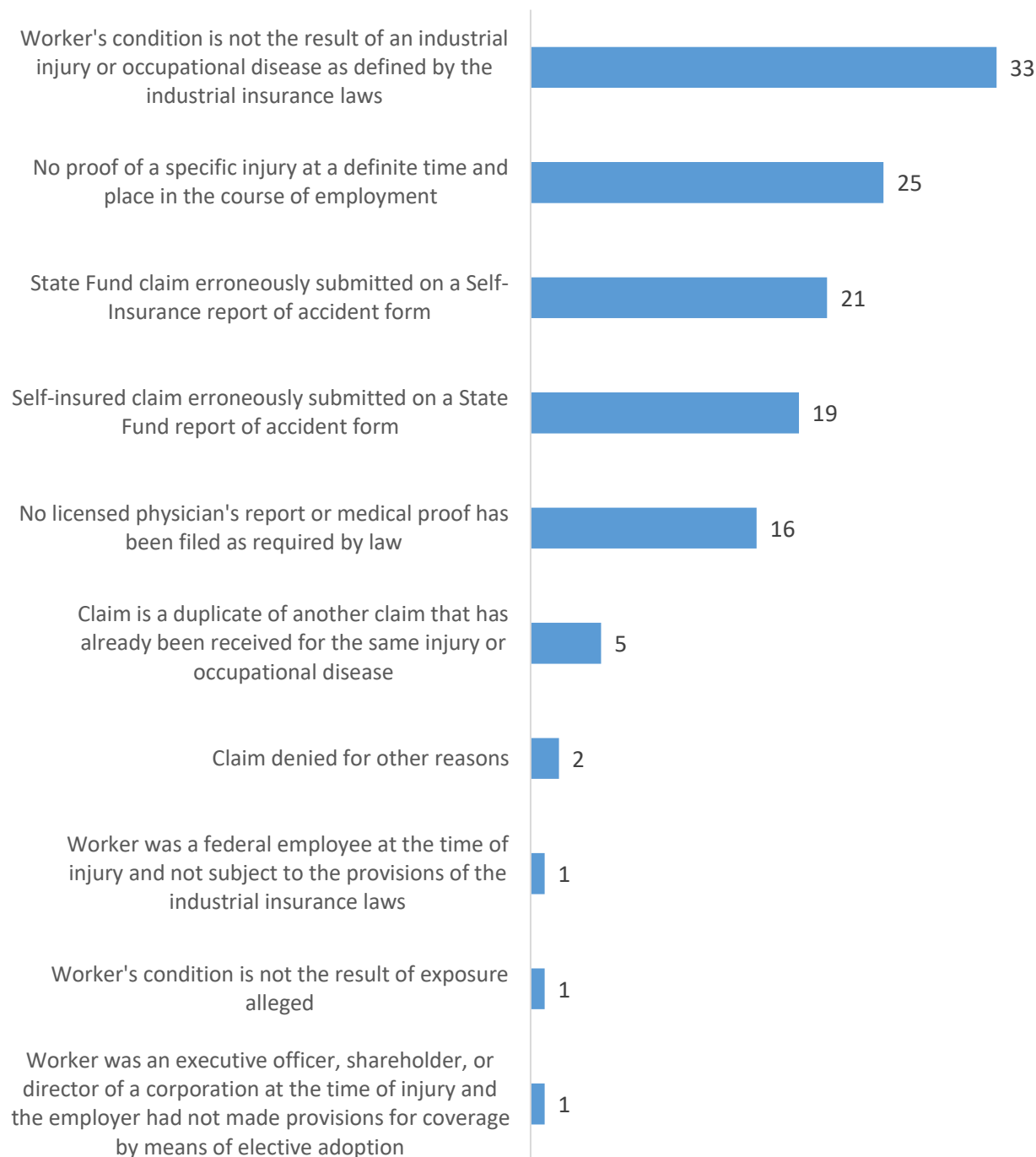
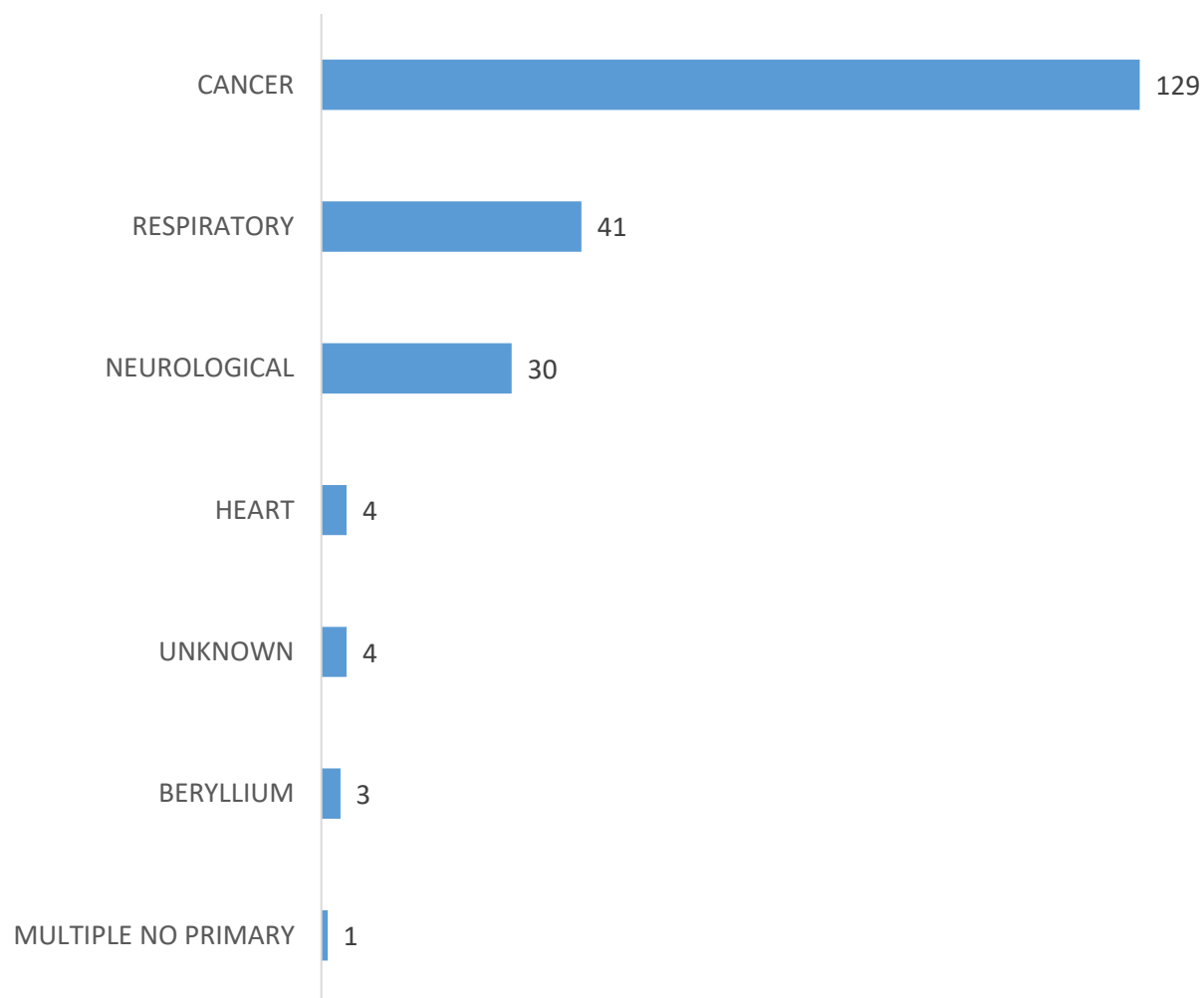


Figure 6: Number of Allowed RHWF Presumption Claims by Primary Condition

Figure 6 shows the primary conditions that prompted workers to file a claim. Cancer was by far the most common, followed by respiratory illness.



BOARD OF INDUSTRIAL INSURANCE APPEALS (BIIA) ISSUES AND OUTCOMES

When an employer or worker disagrees with a department decision, they may appeal to the Board of Industrial Insurance Appeals (BIIA).

Figure 7: BIIA Primary Issues – With BIIA Orders Only

Figure 7 identifies 224 appeals filed for RHWF claims that were issued decisions at the BIIA, the primary reason for the appeal, and the moving party. Overall, the highest number of appeals were filed for claim allowance or denial, with pension awards being second.

Primary Issue Description	Total Appeals	Filed by Employer	Filed by Worker
CLAIM ALLOWANCE OR DENIAL	92	57	35
PENSION	55	34	21
TIME-LOSS	27	8	19
WAGE	23	12	11
PENALTY	8	4	4
NEWLY CONTENTED CONDITION	5	2	3
JURISDICTION	4	2	2
MEDICAL TREATMENT	3	2	1
SOCIAL SECURITY OFFSET	2	1	1
PERMANENT PARTIAL DISABILITY	2		2
LOSS OF EARNING POWER	1		1
CLOSURE	1		1
LIABILITY: LAST INJURIOUS EXPOSURE	1		1
Grand Total	224	122	102

The outcomes of the top-four appeal issues are detailed in figures 8-11.

Figure 8: BIIA Outcomes – Claim Allowance or Denial

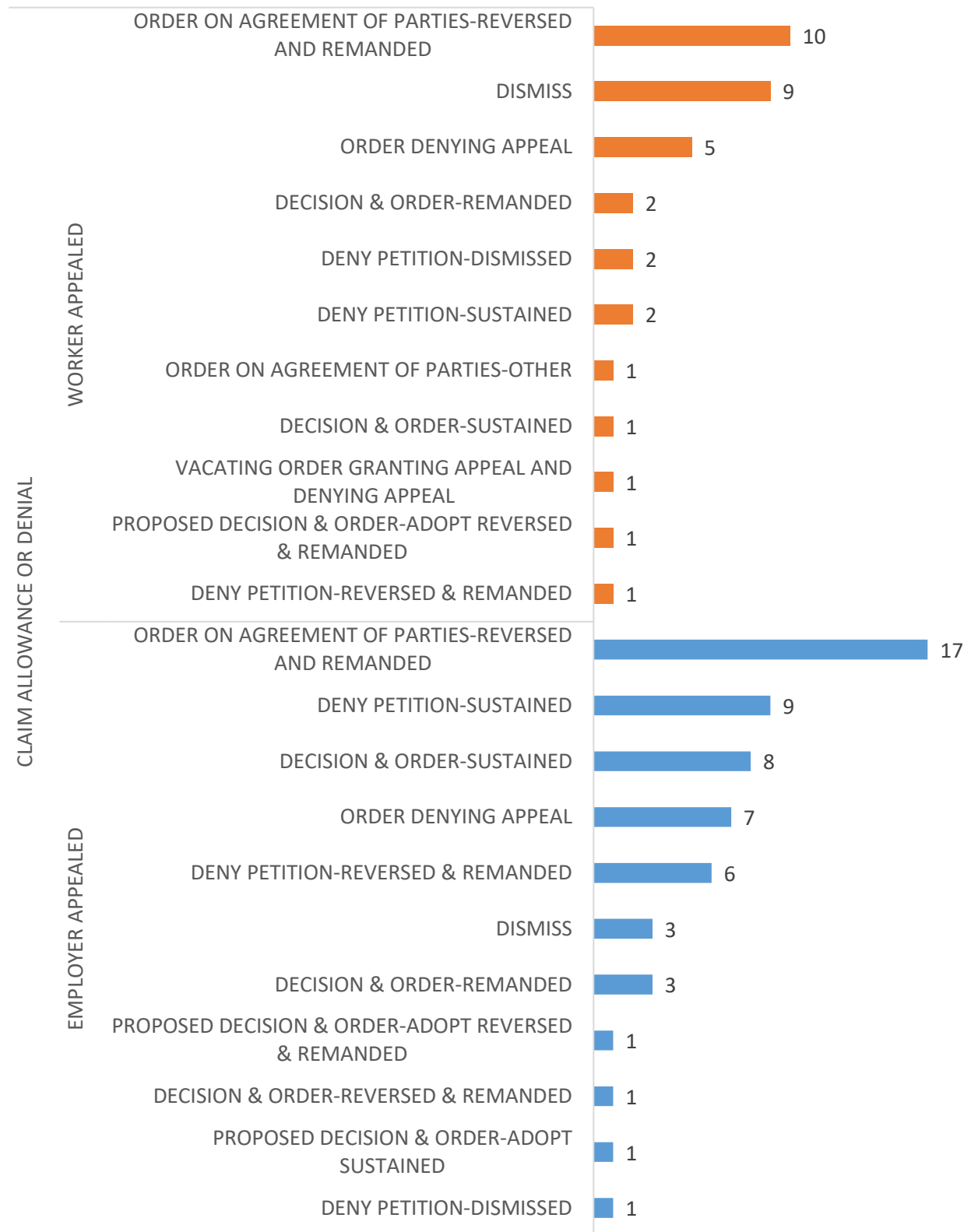


Figure 9: BIIA Outcomes – Pension

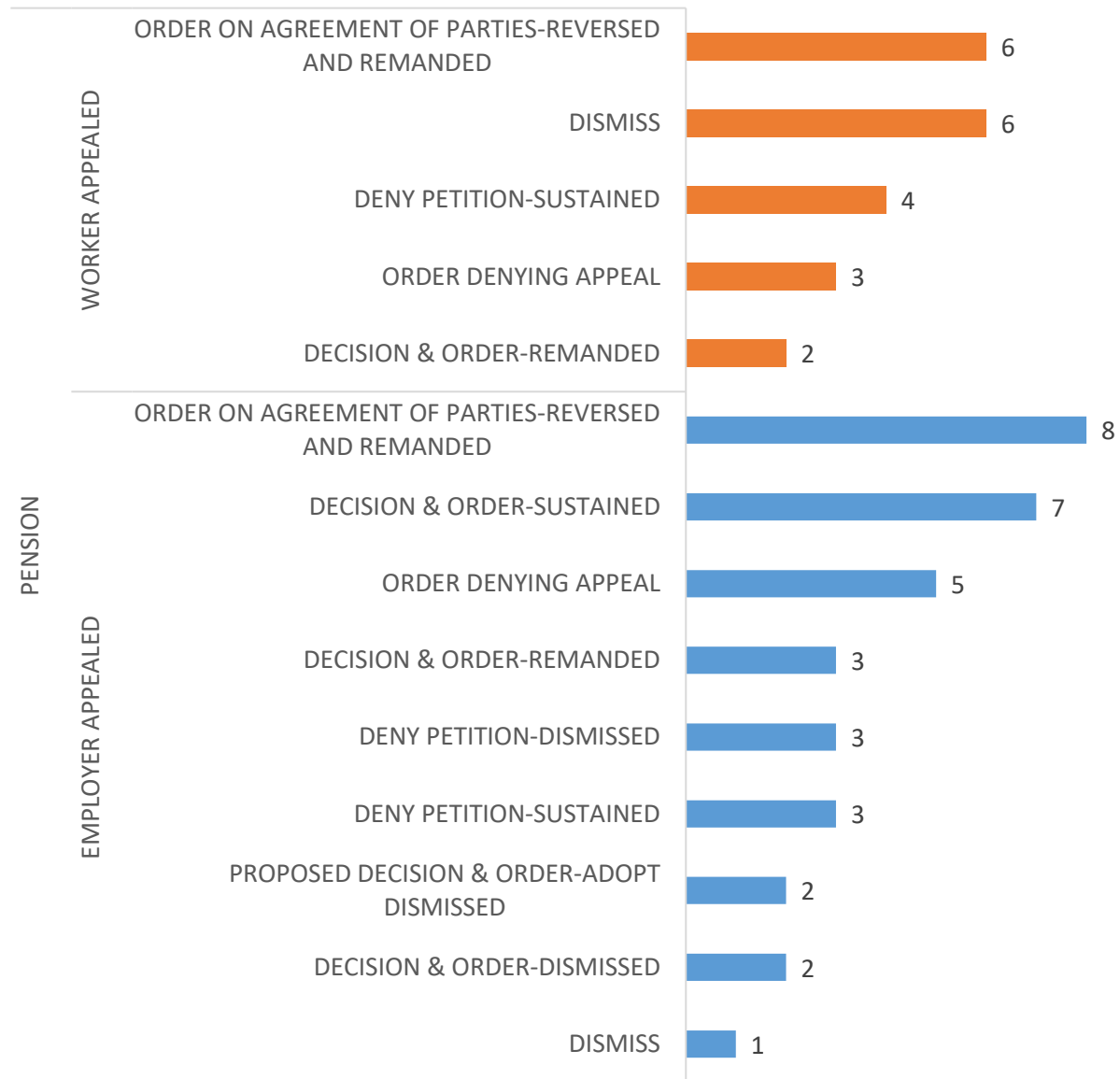


Figure 10: BIIA Outcomes – Time-loss

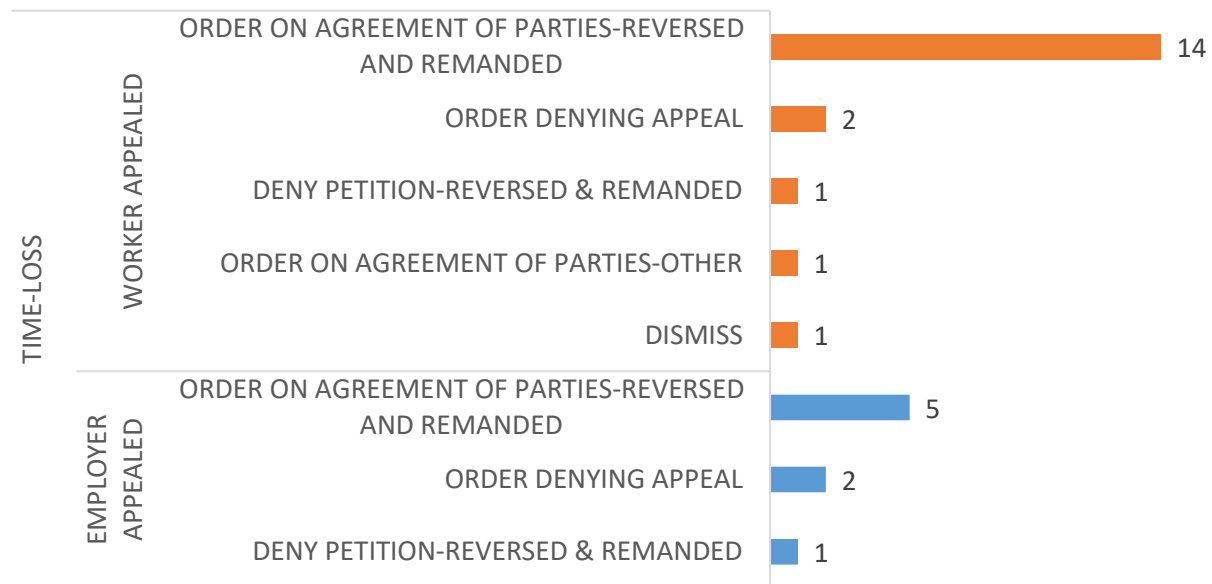
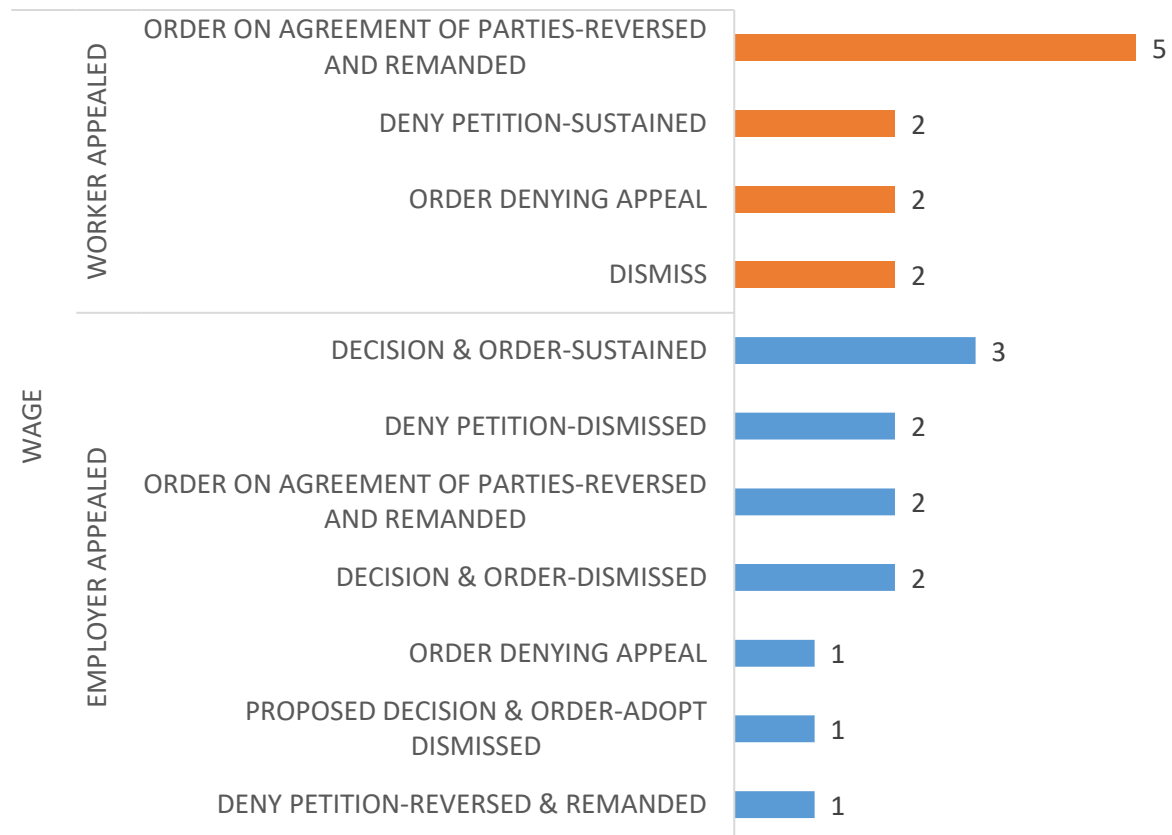


Figure 11: BIIA Outcomes – Wage



Conclusion

Since the law creating a presumption for radiological hazardous waste facility workers was first passed in 2018, the department has received 345 claims for workers' compensation benefits. Of all claims filed, 212, or 73%, have been allowed for workers of self-insured and state fund employers. Fifty of those claims were for fatalities, and 45 family members have been awarded survivor benefits totaling more than \$20 million. Seven workers have been awarded lifetime pensions. By far, the most common primary condition these workers developed was cancer.

After two further revisions of the law, it continues to provide needed benefits to workers exposed to the unique hazards present at radiological hazardous waste facilities – and their families.