

HOUSE BILL REPORT

HB 1873

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to a return-to-work and vocational retraining program for injured workers.

Brief Description: Providing a return-to-work and vocational retraining program for injured workers.

Sponsors: Representatives King, Heavey, Conway, Jones and Johanson.

Brief History:

Reported by House Committee on:
Commerce & Labor, March 2, 1993, DPA.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 6 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Conway; King; Springer; and Veloria.

Minority Report: Do not pass. Signed by 3 members: Representatives Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; and Horn.

Staff: Chris Cordes (786-7117).

Background: Injured workers receive workers' compensation benefits until the medical condition has stabilized and the worker is released to return to work or the claim is closed. A worker who is released to return to work may no longer be employed or only may be able to obtain employment at wages less than his or her wages at the time of injury. Vocational rehabilitation services may be provided to an injured worker if, in the sole discretion of the Department of Labor and Industries, the rehabilitation is both necessary and likely to make the worker employable at gainful employment. Under the vocational rehabilitation program, a worker may be considered employable at gainful employment if the worker is able to work at a job that pays at least the higher of the state or federal minimum wage.

A vocational rehabilitation program may not exceed a cost of \$3,000 or extend beyond a one year period, unless a second year is authorized by the department. When a vocational

rehabilitation program is developed, the program must consider the following priorities: return to work with the same employer at the same job, a modified job, or a new job; return to work with a new employer at a modified or new job; return to work with a new employer or self-employment based on job training; and short term retraining and job placement.

The department is directed to engage in, when feasible and cost-effective, a cooperative program with the Employment Security Department to provide job placement services.

The worker's attending physician may authorize the worker to return to a light duty job during the period of recovery from the injury. If the light duty job pays less than 95 percent of the worker's wages at injury, the worker is entitled to partial benefits that are paid in proportion to the worker's loss of earning power.

Summary of Amended Bill: The goal of the vocational rehabilitation program is changed to include a goal of enabling workers become employable at employment that is both suitable and gainful.

Requirements are deleted from the vocational rehabilitation program that the program be necessary and likely to enable the worker to become employable at gainful employment and that the Department of Labor and Industries has sole discretion to determine whether to pay for a vocational rehabilitation program. Other provisions deleted include a provision establishing priorities for the types of rehabilitation offered to workers, and the provisions for costs allowed under the programs and the duration of programs.

New provisions are added establishing the requirements for assisting a worker in vocational retraining efforts. When an injured worker's attending physician has authorized a worker to return to work or to participate in vocational retraining efforts, the department must notify the employer of record. If, within 60 days of the notice, the worker has not returned to work at a job paying at least 80 percent of the worker's wages at the time of injury, the injured worker may choose either compensation based on loss of earning power or a retraining program.

The option for compensation based on loss of earning power may be for a period of up to five years or until the worker reaches age 65, whichever is the shorter period. The amount of the payment will be in proportion to the worker's new earning power as compared to the old earning power. To be eligible, the worker must have more than a 5 percent loss of

earning power. The worker is also eligible for job placement services.

If the worker chooses retraining, the options include either a basic or an optional retraining program. Basic retraining may not exceed two years, with eligibility for temporary total disability compensation ending upon employment at the completion of training. After 30 days of successful employment, the worker's condition is considered fixed and the claim is subject to closure. Job placement services are also authorized.

Optional retraining allows the worker to choose a training program for any appropriate length of time, including a program longer than two years. However, after two years in the program, the worker is no longer entitled to temporary total disability payments or loss of earning power payments and the claim is subject to closure. The director has discretion to extend compensation for up to five years or to age 65, whichever is the shorter period.

Training costs for both programs include the cost of books, tuition, and other necessary expenses, not to exceed 125 percent of the average annual cost of higher education in the state, the cost of temporary total disability payments and loss of earning power payments, and the cost of transportation and child care related to the worker's participation in the program. Expenses may include training fees and the cost of tools or equipment for self-employment. Under the training options, the worker may choose his or her vocational counselor from a list maintained by the department. The list may include administrative entities of service delivery areas under the federal Job Training and Partnership Act.

Workers participating in a training program are eligible for health care under the state basic health plan.

The requirement for the department to engage in a cooperative agreement with the Employment Security Department for job placement services is changed to delete the reference to determining the program's feasibility and cost effectiveness.

The new vocational retraining program is not to be construed as changing or otherwise adversely affecting the terms and conditions of employment applicable to a worker under a collective bargaining agreement.

Amended Bill Compared to Original Bill: The amended bill adds a provision permitting the administrative entities of service delivery areas under the federal Job Training and

Partnership Act to be eligible as providers of vocational rehabilitation services.

Fiscal Note: Available. New fiscal note requested on March 4, 1993.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The vocational rehabilitation system for injured workers is not working. Injured workers cannot support their families or meet financial obligations when they must return to work in a low paying job. Requiring workers to return to minimum wage employment does not meet the intent of the law. Some workers who are cleared to return to work have so many restrictions that they are not able to work full-time and therefore are not eligible for unemployment compensation when they begin looking for work. This kind of a system does not satisfy the original bargain made by workers and employers. The bill establishes a retraining focus, not a rehabilitation focus. The current vocational program is spending just as much money as it was in 1985, but the money is not going to training. With training options, the worker will have more control over his or her future.

Testimony Against: The eligibility requirements in the bill are too broad. The bill might include many workers who do not need retraining and the training money would not go to those workers who need it most. The 60 day limit for getting the worker back to work may be too short if a job modification is needed. Relying only on the attending physician to determine ability to return to work creates opportunities for the system to be abused. Adopting this bill now, without consideration of the entire vocational rehabilitation program, is premature. The issue should be addressed after the Joint Labor-Management Task Force on Long-Term Disability has finished its review. The provision allowing workers to participate in the state Basic Health Plan raises several concerns, because the plan is not accepting applicants and the plan does not operate in all parts of the state.

Witnesses: (In favor) Lynn Greiner; Patty McQuade; Jeff Johnson, Washington State Labor Council; Robbie Stern, King County Labor Council; and Bob Dilger, Washington Building and Construction Trades Council. (Opposed) Jeanne West; and Dwight Thompson. (No position indicated, but with concerns) Chuck Holmquist, Department of Labor and Industries; and Leslie Thorpe, Basic Health Plan.