
SUBSTITUTE HOUSE BILL 1607

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives McMorris, Thompson, Dyer, Sheldon, Boldt, Honeyford, Lisk, Clements, Mulliken and Mielke)

Read first time 03/05/97.

1 AN ACT Relating to determination of benefits for permanent partial
2 disability by industrial insurance self-insurers; amending RCW
3 51.32.055; creating a new section; providing an effective date; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 51.32.055 and 1994 c 97 s 1 are each amended to read
7 as follows:

8 (1) One purpose of this title is to restore the injured worker as
9 nearly as possible to the condition of self-support as an able-bodied
10 worker. Benefits for permanent disability shall be determined under
11 the director's supervision, except as otherwise authorized in
12 subsection (9) of this section, only after the injured worker's
13 condition becomes fixed.

14 (2) All determinations of permanent disabilities shall be made by
15 the department, except as otherwise authorized in subsection (9) of
16 this section. Either the worker, employer, or self-insurer may make a
17 request or the inquiry may be initiated by the director or, as
18 authorized in subsection (9) of this section, by the self-insurer on
19 ((his or her)) the director or the self-insurer's own motion.

1 Determinations shall be required in every instance where permanent
2 disability is likely to be present. All medical reports and other
3 pertinent information in the possession of or under the control of the
4 employer or, if the self-insurer has made a request to the department,
5 in the possession of or under the control of the self-insurer shall be
6 forwarded to the director with the request.

7 (3) A request for determination of permanent disability shall be
8 examined by the department or, if authorized in subsection (9) of this
9 section, the self-insurer, and the department shall issue an order
10 (~~shall issue~~) in accordance with RCW 51.52.050 or, in the case of a
11 self-insured employer, the self-insurer may: (a) Enter a written
12 order, communicated to the worker and the department self-insurance
13 section in accordance with subsection (9) of this section, or (b)
14 request the department to issue an order in accordance with RCW
15 51.52.050.

16 (4) The department or, in cases authorized in subsection (9) of
17 this section, the self-insurer may require that the worker present
18 himself or herself for a special medical examination by a physician or
19 physicians selected by the department, and the department or, in cases
20 authorized in subsection (9) of this section, the self-insurer may
21 require that the worker present himself or herself for a personal
22 interview. The costs of the examination or interview, including
23 payment of any reasonable travel expenses, shall be paid by the
24 department or self-insurer, as the case may be.

25 (5) The director may establish a medical bureau within the
26 department to perform medical examinations under this section.
27 Physicians hired or retained for this purpose shall be grounded in
28 industrial medicine and in the assessment of industrial physical
29 impairment. Self-insurers shall bear a proportionate share of the cost
30 of the medical bureau in a manner to be determined by the department.

31 (6) Where a dispute arises from the handling of any claim before
32 the condition of the injured worker becomes fixed, the worker,
33 employer, or self-insurer may request the department to resolve the
34 dispute or the director may initiate an inquiry on his or her own
35 motion. In these cases, the department shall proceed as provided in
36 this section and an order shall issue in accordance with RCW 51.52.050.

37 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,
38 1986, and before July 1, 1997, (ii) involves only medical treatment and
39 the payment of temporary disability compensation under RCW 51.32.090 or

1 only the payment of temporary disability compensation under RCW
2 51.32.090, (iii) at the time medical treatment is concluded does not
3 involve permanent disability, (iv) is one with respect to which the
4 department has not intervened under subsection (6) of this section, and
5 (v) the injured worker has returned to work with the self-insured
6 employer of record, whether at the worker's previous job or at a job
7 that has comparable wages and benefits, the claim may be closed by the
8 self-insurer, subject to reporting of claims to the department in a
9 manner prescribed by department rules adopted under chapter 34.05 RCW.

10 (b) All determinations of permanent disability for claims accepted
11 under this subsection (7) by self-insurers (~~((after June 30, 1986,))~~)
12 shall be made by the self-insured section of the department under
13 subsections (1) through (4) of this section.

14 (c) Upon closure of a claim under (a) of this subsection, the self-
15 insurer shall enter a written order, communicated to the worker and the
16 department self-insurance section, which contains the following
17 statement clearly set forth in bold face type: "This order constitutes
18 notification that your claim is being closed with medical benefits and
19 temporary disability compensation only as provided, and with the
20 condition you have returned to work with the self-insured employer. If
21 for any reason you disagree with the conditions or duration of your
22 return to work or the medical benefits or the temporary disability
23 compensation that has been provided, you (~~((may))~~) must protest in
24 writing to the department of labor and industries, self-insurance
25 section, within sixty days of the date you received this order." (~~((If~~
26 ~~the department receives such a protest, the self insurer's closure~~
27 ~~order shall be held in abeyance. The department shall review the claim~~
28 ~~closure action and enter a determinative order as provided for in RCW~~
29 ~~51.52.050.~~

30 ~~((d) If within two years of claim closure the department determines~~
31 ~~that the self insurer has made payment of benefits because of clerical~~
32 ~~error, mistake of identity, or innocent misrepresentation or the~~
33 ~~department discovers a violation of the conditions of claim closure,~~
34 ~~the department may require the self insurer to correct the benefits~~
35 ~~paid or payable. This paragraph does not limit in any way the~~
36 ~~application of RCW 51.32.240.))~~

37 (8)(a) If a claim (~~((a))~~) (i) is accepted by a self-insurer after
38 June 30, 1990, (~~((b))~~) and before July 1, 1997, (ii) involves only
39 medical treatment, (~~((c))~~) (iii) does not involve payment of temporary

1 disability compensation under RCW 51.32.090, and ~~((d))~~ (iv) at the
2 time medical treatment is concluded does not involve permanent
3 disability, the claim may be closed by the self-insurer, subject to
4 reporting of claims to the department in a manner prescribed by
5 department rules adopted under chapter 34.05 RCW. Upon closure of a
6 claim, the self-insurer shall enter a written order, communicated to
7 the worker, which contains the following statement clearly set forth in
8 bold-face type: "This order constitutes notification that your claim
9 is being closed with medical benefits only, as provided. If for any
10 reason you disagree with this closure, you ~~((may))~~ must protest in
11 writing to the Department of Labor and Industries, Olympia, within 60
12 days of the date you received this order. The department will then
13 review your claim and enter a further determinative order." ~~((If the
14 department receives such a protest, it shall review the claim and enter
15 a further determinative order as provided for in RCW 51.52.050.))~~

16 (b) All determinations of permanent disability for claims accepted
17 under this subsection (8) by self-insurers shall be made by the self-
18 insured section of the department under subsections (1) through (4) of
19 this section.

20 (9)(a) If a claim: (i) Is accepted by a self-insurer after June
21 30, 1997; (ii)(A) involves only medical treatment, or medical treatment
22 and the payment of temporary disability compensation under RCW
23 51.32.090, and a determination of permanent partial disability, if
24 applicable, has been made by the self-insurer as authorized in this
25 subsection; or (B) involves only the payment of temporary disability
26 compensation under RCW 51.32.090 and a determination of permanent
27 partial disability, if applicable, has been made by the self-insurer as
28 authorized in this subsection; (iii) is one with respect to which the
29 department has not intervened under subsection (6) of this section; and
30 (iv) concerns an injured worker who has returned to work with the self-
31 insured employer of record, whether at the worker's previous job or at
32 a job that has comparable wages and benefits, the claim may be closed
33 by the self-insurer, subject to reporting of claims to the department
34 in a manner prescribed by department rules adopted under chapter 34.05
35 RCW.

36 (b) Upon closure of a claim under this subsection (9), the self-
37 insurer shall enter a written order, communicated to the worker and the
38 department self-insurance section, which contains the following
39 statement clearly set forth in bold-face type: "This order constitutes

1 notification that your claim is being closed with such medical benefits
2 and temporary disability compensation as provided to date and with such
3 award for permanent partial disability, if any, as set forth below, and
4 with the condition that you have returned to work with the self-insured
5 employer. If for any reason you disagree with the conditions or
6 duration of your return to work or the medical benefits, temporary
7 disability compensation provided, or permanent partial disability that
8 has been awarded, you must protest in writing to the Department of
9 Labor and Industries, Self-Insurance Section, within sixty days of the
10 date you received this order. If you do not protest this order to the
11 department, this order will become final."

12 (c) All determinations of permanent partial disability for claims
13 accepted by self-insurers under this subsection (9) may be made by the
14 self-insurer or the self-insurer may request a determination by the
15 self-insured section of the department. All determinations shall be
16 made under subsections (1) through (4) of this section.

17 (10) If the department receives a protest of an order issued by a
18 self-insurer under subsections (7) through (9) of this section, the
19 self-insurer's closure order must be held in abeyance. The department
20 shall review the claim closure action and enter a further determinative
21 order as provided for in RCW 51.52.050. If no protest is timely filed,
22 the closing order issued by the self-insurer shall become final and
23 shall have the same force and effect as a department order that has
24 become final under RCW 51.52.050.

25 (11) If within two years of claim closure under subsections (7)
26 through (9) of this section, the department determines that the self-
27 insurer has made payment of benefits because of clerical error, mistake
28 of identity, or innocent misrepresentation or the department discovers
29 a violation of the conditions of claim closure, the department may
30 require the self-insurer to correct the benefits paid or payable. This
31 subsection (11) does not limit in any way the application of RCW
32 51.32.240.

33 (12) For the purposes of this section, "comparable wages and
34 benefits" means wages and benefits that are at least ninety-five
35 percent of the wages and benefits received by the worker at the time of
36 injury.

37 **NEW SECTION. Sec. 2.** The department of labor and industries shall
38 review the permanent partial disability claims closure activity by

1 self-insured employers authorized under RCW 51.32.055(9) through at
2 least June 30, 1999. The department must also review the claims
3 closure activity by the self-insured section of the department for the
4 same period. The review of these activities must include the number
5 and types of claims closed, protested, reconsidered, and appealed, and
6 the results of such activities, including the results of injured worker
7 satisfaction surveys conducted by the department. The department must
8 report on its review to the appropriate committees of the legislature
9 no later than January 1, 2000.

10 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 July 1, 1997.

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