
HOUSE BILL 3044

State of Washington

55th Legislature

1998 Regular Session

By Representative McMorris

Read first time 01/27/98. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to determining an injured worker's wages for
2 purposes of eligibility for temporary total disability compensation;
3 and reenacting and amending RCW 51.32.090.

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

5 **Sec. 1.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
6 c 271 s 1 are each reenacted and amended to read as follows:

7 (1) When the total disability is only temporary, the schedule of
8 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
9 the total disability continues.

10 (2) Any compensation payable under this section for children not in
11 the custody of the injured worker as of the date of injury shall be
12 payable only to such person as actually is providing the support for
13 such child or children pursuant to the order of a court of record
14 providing for support of such child or children.

15 (3)(a) As soon as recovery is so complete that the present earning
16 power of the worker, at any kind of work, is restored to that existing
17 at the time of the occurrence of the injury, the payments shall cease.
18 If and so long as the present earning power is only partially restored,
19 the payments shall:

1 (i) For claims for injuries that occurred before May 7, 1993,
2 continue in the proportion which the new earning power shall bear to
3 the old; or

4 (ii) For claims for injuries occurring on or after May 7, 1993,
5 equal eighty percent of the actual difference between the worker's
6 present wages and earning power at the time of injury, but: (A) The
7 total of these payments and the worker's present wages may not exceed
8 one hundred fifty percent of the average monthly wage in the state as
9 computed under RCW 51.08.018; (B) the payments may not exceed one
10 hundred percent of the entitlement as computed under subsection (1) of
11 this section; and (C) the payments may not be less than the worker
12 would have received if (a)(i) of this subsection had been applicable to
13 the worker's claim.

14 (b) No compensation shall be payable under this subsection (3)
15 unless the loss of earning power shall exceed five percent.

16 (4)(a) Whenever the employer of injury requests that a worker who
17 is entitled to temporary total disability under this chapter be
18 certified by a physician as able to perform available work other than
19 his or her usual work, the employer shall furnish to the physician,
20 with a copy to the worker, a statement describing the work available
21 with the employer of injury in terms that will enable the physician to
22 relate the physical activities of the job to the worker's disability.
23 The physician shall then determine whether the worker is physically
24 able to perform the work described. The worker's temporary total
25 disability payments shall continue until the worker is released by his
26 or her physician for the work, and begins the work with the employer of
27 injury. If the work thereafter comes to an end before the worker's
28 recovery is sufficient in the judgment of his or her physician to
29 permit him or her to return to his or her usual job, or to perform
30 other available work offered by the employer of injury, the worker's
31 temporary total disability payments shall be resumed. Should the
32 available work described, once undertaken by the worker, impede his or
33 her recovery to the extent that in the judgment of his or her physician
34 he or she should not continue to work, the worker's temporary total
35 disability payments shall be resumed when the worker ceases such work.

36 (b) Once the worker returns to work under the terms of this
37 subsection (4), he or she shall not be assigned by the employer to work
38 other than the available work described without the worker's written

1 consent, or without prior review and approval by the worker's
2 physician.

3 (c) If the worker returns to work under this subsection (4), any
4 employee health and welfare benefits that the worker was receiving at
5 the time of injury shall continue or be resumed at the level provided
6 at the time of injury. Such benefits shall not be continued or resumed
7 if to do so is inconsistent with the terms of the benefit program, or
8 with the terms of the collective bargaining agreement currently in
9 force.

10 (d) In the event of any dispute as to the worker's ability to
11 perform the available work offered by the employer, the department
12 shall make the final determination.

13 (5) No worker shall receive compensation for or during the day on
14 which injury was received or the three days following the same, unless
15 his or her disability shall continue for a period of fourteen
16 consecutive calendar days from date of injury: PROVIDED, That attempts
17 to return to work in the first fourteen days following the injury shall
18 not serve to break the continuity of the period of disability if the
19 disability continues fourteen days after the injury occurs.

20 (6) Should a worker suffer a temporary total disability and should
21 his or her employer at the time of the injury continue to pay him or
22 her the wages which he or she was earning at the time of such injury
23 or, for a worker subject to RCW 51.08.178(2), the wages determined
24 under RCW 51.08.178(2), such injured worker shall not receive any
25 payment provided in subsection (1) of this section during the period
26 his or her employer shall so pay such wages.

27 (7) In no event shall the monthly payments provided in this section
28 exceed the applicable percentage of the average monthly wage in the
29 state as computed under the provisions of RCW 51.08.018 as follows:

30	AFTER	PERCENTAGE
31	June 30, 1993	105%
32	June 30, 1994	110%
33	June 30, 1995	115%
34	June 30, 1996	120%

1 (8) If the supervisor of industrial insurance determines that the
2 worker is voluntarily retired and is no longer attached to the work
3 force, benefits shall not be paid under this section.

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