
SUBSTITUTE SENATE BILL 5631

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Labor & Workforce Development (originally sponsored by Senators Wojahn, Winsley, Fairley and Costa)

Read first time 02/04/00.

1 AN ACT Relating to vocational rehabilitation services; amending RCW
2 51.32.095; and providing an effective date.

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

4 **Sec. 1.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
5 as follows:

6 (1) One of the primary purposes of this title is to enable the
7 injured worker to become employable at gainful employment. To this
8 end, the department or self-insurers shall utilize the services of
9 individuals and organizations, public or private, whose experience,
10 training, and interests in vocational rehabilitation and retraining
11 qualify them to lend expert assistance to the supervisor of industrial
12 insurance in such programs of vocational rehabilitation as may be
13 reasonable to make the worker employable consistent with his or her
14 physical and mental status. Where, after evaluation and recommendation
15 by such individuals or organizations and prior to final evaluation of
16 the worker's permanent disability and in the sole opinion of the
17 supervisor or supervisor's designee, whether or not medical treatment
18 has been concluded, vocational rehabilitation is both necessary and
19 likely to enable the injured worker to become employable at gainful

1 employment, the supervisor or supervisor's designee may, in his or her
2 sole discretion, pay or, if the employer is a self-insurer, direct the
3 self-insurer to pay the cost as provided in subsection (3) of this
4 section.

5 (2) When in the sole discretion of the supervisor or the
6 supervisor's designee vocational rehabilitation is both necessary and
7 likely to make the worker employable at gainful employment, then the
8 following order of priorities shall be used:

9 (a) Return to the previous job with the same employer;

10 (b) Modification of the previous job with the same employer
11 including transitional return to work;

12 (c) A new job with the same employer in keeping with any
13 limitations or restrictions;

14 (d) Modification of a new job with the same employer including
15 transitional return to work;

16 (e) Modification of the previous job with a new employer;

17 (f) A new job with a new employer or self-employment based upon
18 transferable skills;

19 (g) Modification of a new job with a new employer;

20 (h) A new job with a new employer or self-employment involving on-
21 the-job training;

22 (i) Short-term retraining and job placement.

23 (3)(a) Except as provided in (b) of this subsection, costs for
24 vocational rehabilitation benefits allowed by the supervisor or
25 supervisor's designee under subsection (1) of this section may include
26 the cost of books, tuition, fees, supplies, equipment, transportation,
27 child or dependent care, and other necessary expenses for any such
28 worker in an amount not to exceed three thousand dollars in any fifty-
29 two week period (~~except as authorized by RCW 51.60.060~~), and the cost
30 of continuing the temporary total disability compensation under RCW
31 51.32.090 while the worker is actively and successfully undergoing a
32 formal program of vocational rehabilitation.

33 (b) Beginning with vocational rehabilitation plans approved on or
34 after July 1, 1999, costs for vocational rehabilitation benefits
35 allowed by the supervisor or supervisor's designee under subsection (1)
36 of this section may include the cost of books, tuition, fees, supplies,
37 equipment, child or dependent care, and other necessary expenses for
38 any such worker in an amount not to exceed four thousand dollars in any
39 fifty-two week period (~~except as authorized by RCW 51.60.060~~), and

1 the cost of transportation and continuing the temporary total
2 disability compensation under RCW 51.32.090 while the worker is
3 actively and successfully undergoing a formal program of vocational
4 rehabilitation.

5 (c) The expenses allowed under (a) or (b) of this subsection may
6 include training fees for on-the-job training and the cost of
7 furnishing tools and other equipment necessary for self-employment or
8 reemployment. However, compensation or payment of retraining with job
9 placement expenses under (a) or (b) of this subsection may not be
10 authorized for a period of more than fifty-two weeks, except that such
11 period may, in the sole discretion of the supervisor after his or her
12 review, be extended for an additional fifty-two weeks or portion
13 thereof by written order of the supervisor.

14 (d) In cases where the worker is required to reside away from his
15 or her customary residence, the reasonable cost of board and lodging
16 shall also be paid.

17 (e) Costs paid under this subsection shall be chargeable to the
18 employer's cost experience or shall be paid by the self-insurer as the
19 case may be.

20 ~~(4) ((In addition to the vocational rehabilitation expenditures
21 provided for under subsection (3) of this section, an additional five
22 thousand dollars may, upon authorization of the supervisor or the
23 supervisor's designee, be expended for: (a) Accommodations for an
24 injured worker that are medically necessary for the worker to
25 participate in an approved retraining plan; and (b) accommodations
26 necessary to perform the essential functions of an occupation in which
27 an injured worker is seeking employment, consistent with the retraining
28 plan or the recommendations of a vocational evaluation. The injured
29 worker's attending physician must verify the necessity of the
30 modifications or accommodations. The total expenditures authorized in
31 this subsection and the expenditures authorized under RCW 51.32.250
32 shall not exceed five thousand dollars))~~ The following early
33 intervention services are authorized as provided in this subsection.

34 (a) To provide employers and injured workers greater flexibility in
35 returning injured workers to work at the same job or a new job with the
36 employer of injury or a new employer, a self-insurer or the supervisor
37 of industrial insurance, or supervisor's designee, in his or her sole
38 discretion, at an employer's request and with the employer's approval,

1 may pay the costs of early intervention services as provided in (b) of
2 this subsection, if:

3 (i) The attending doctor has certified that it is more probable
4 than not that the injured worker's accepted condition will last more
5 than twelve months from the date of injury, and that the injured
6 worker's accepted condition constitutes a substantial impairment that
7 prevents the injured worker from performing an essential function of
8 the job at injury; and

9 (ii) The employer has obtained a job analysis of the proposed job
10 completed by a qualified vocational rehabilitation professional and
11 approved by the attending doctor. The job analysis must meet standards
12 determined by department rule, not to exceed the job analysis
13 requirements of the federal Americans with disabilities act, P.L. 101-
14 336.

15 (b) Early intervention services may include:

16 (i) The costs of job modification, including workstation
17 improvements and personal accommodation devices. If expenditures are
18 for a new job with the employer of injury or a new employer,
19 modification of the worker's job at injury must not be an option or
20 constitute an undue hardship to the employer, and the worker's wages
21 must be at least ninety-five percent of the worker's wages at injury;

22 (ii) Skill enhancement costs, limited to tuition, books, and fees,
23 to provide the injured worker with skills to meet the requirements of
24 the new job;

25 (iii) Professional services, such as job modification consultation
26 to assist with job modification and skill enhancement; and

27 (iv) A wage subsidy of up to thirty percent of the injured worker's
28 wages for a modified job at injury or a new job. If the payment of a
29 wage subsidy pursuant to a schedule authorized under this subsection is
30 not completed before claim closure, the subsidy may continue to be paid
31 after the claim is closed, consistent with the authorized schedule. An
32 injured worker is not eligible for a wage subsidy and benefits under
33 RCW 51.32.090(3) for the same period.

34 (c) Early intervention services, except for services under (b)(i)
35 of this subsection, must terminate if the injured worker has refused a
36 bona fide offer of employment or if the injured worker is referred for
37 vocational assessment.

38 (d) Total costs for early intervention services may not exceed five
39 thousand dollars, and expenditures for services under (b)(ii) through

1 (iv) of this subsection may not exceed two thousand five hundred
2 dollars of the five thousand dollar total.

3 (e) For state fund employers, the costs under (b)(i) of this
4 subsection shall be charged to the employer's medical aid fund cost
5 experience, and the costs under (b)(ii) through (iv) of this subsection
6 shall be charged to the state fund employer's accident fund cost
7 experience. Self-insured employers shall pay all costs of early
8 intervention services directly, except for costs under (b)(i) of this
9 subsection, which shall be charged to the second injury fund.

10 (f)(i) If an employer fails to retain an injured worker who
11 received early intervention services under this section in the new or
12 modified job for at least fifty-two weeks, the employer must repay the
13 benefits paid under this section, unless the failure to retain the
14 worker was for reasons not attributable to the employer. The employer
15 may contest a department order assessing the repayment in the same
16 manner and to the same extent as provided in RCW 51.52.050 and
17 51.52.060.

18 (ii)(A) If a department's order of repayment under this subsection
19 becomes final under chapter 51.52 RCW, the director or director's
20 designee may file with the clerk in any county within the state a
21 warrant in the amount representing the sum to be repaid plus interest
22 accruing from the date the order became final. The clerk of the court
23 shall be entitled to a filing fee of five dollars, which shall be added
24 to the amount of the warrant. A copy of the warrant shall be mailed to
25 the employer within three days of filing with the clerk.

26 (B) The clerk of the county in which the warrant is filed shall
27 immediately designate a superior court cause number for the warrant and
28 the clerk shall cause to be entered in the judgment docket under the
29 superior court cause number assigned to the warrant the name of the
30 employer named in the warrant, the amount of the repayment plus
31 interest accrued, and the date the warrant was filed. The amount of
32 the warrant as docketed shall become a lien upon the title to and
33 interest in all real and personal property of the employer against whom
34 the warrant is issued, the same as a judgment in a civil case docketed
35 in the office of such clerk. The sheriff shall then proceed in the
36 same manner and with like effect as prescribed by law with respect to
37 execution or other process issued against rights or property upon
38 judgment in the superior court.

1 (C) A warrant docketed under this subsection shall be sufficient to
2 support:

3 (I) The issuance of writs of garnishment in favor of the department
4 in the manner provided by law in the case of judgment, wholly or
5 partially unsatisfied; and

6 (II) Any action by the department authorized under this title for
7 the collection of payments due to the state fund.

8 (5) The department shall establish criteria to monitor the quality
9 and effectiveness of rehabilitation services provided by the
10 individuals and organizations used under subsection (1) of this
11 section. The state fund shall make referrals for vocational
12 rehabilitation services based on these performance criteria.

13 (6) The department shall engage in, where feasible and cost-
14 effective, a cooperative program with the state employment security
15 department to provide job placement services under this section.

16 (7) The benefits in this section shall be provided for the injured
17 workers of self-insured employers. Self-insurers shall report both
18 benefits provided and benefits denied under this section in the manner
19 prescribed by the department by rule adopted under chapter 34.05 RCW.
20 The director may, in his or her sole discretion and upon his or her own
21 initiative or at any time that a dispute arises under this section,
22 promptly make such inquiries as circumstances require and take such
23 other action as he or she considers will properly determine the matter
24 and protect the rights of the parties.

25 (8) Except as otherwise provided in this section, the benefits
26 provided for in this section are available to any otherwise eligible
27 worker regardless of the date of industrial injury. However, claims
28 shall not be reopened solely for vocational rehabilitation purposes.

29 NEW SECTION. Sec. 2. Section 1 of this act takes effect July 1,
30 2000.

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