
HOUSE BILL 2905

State of Washington 57th Legislature 2002 Regular Session

By Representatives Clements, Chandler, McMorris and Mulliken

Read first time 02/04/2002. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to simplifying and adding certainty to the
2 calculation of workers' compensation benefits; amending RCW 51.08.178
3 and 51.32.095; creating a new section; and providing an effective date.

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

5 **Sec. 1.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read
6 as follows:

7 (1) For the purposes of this title, the monthly wages the worker
8 was receiving from all employment at the time of injury shall be the
9 basis upon which compensation is computed unless otherwise provided
10 specifically in the statute concerned. (~~In cases where the worker's~~
11 ~~wages are not fixed by the month, they shall be determined by~~
12 ~~multiplying the daily wage the worker was receiving at the time of the~~
13 ~~injury:~~

14 ~~(a) By five, if the worker was normally employed one day a week;~~

15 ~~(b) By nine, if the worker was normally employed two days a week;~~

16 ~~(c) By thirteen, if the worker was normally employed three days a~~
17 ~~week;~~

18 ~~(d) By eighteen, if the worker was normally employed four days a~~
19 ~~week;~~

1 ~~(e) By twenty two, if the worker was normally employed five days a~~
2 ~~week;~~

3 ~~(f) By twenty six, if the worker was normally employed six days a~~
4 ~~week;~~

5 ~~(g) By thirty, if the worker was normally employed seven days a~~
6 ~~week.~~

7 ~~The term "wages" shall include the reasonable value of board,~~
8 ~~housing, fuel, or other consideration of like nature received from the~~
9 ~~employer as part of the contract of hire, but shall not include~~
10 ~~overtime pay except in cases under subsection (2) of this section.~~
11 ~~However, tips shall also be considered wages only to the extent such~~
12 ~~tips are reported to the employer for federal income tax purposes. The~~
13 ~~daily wage shall be the hourly wage multiplied by the number of hours~~
14 ~~the worker is normally employed. The number of hours the worker is~~
15 ~~normally employed shall be determined by the department in a fair and~~
16 ~~reasonable manner, which may include averaging the number of hours~~
17 ~~worked per day.~~

18 ~~(2) In cases where (a) the worker's employment is exclusively~~
19 ~~seasonal in nature or (b) the worker's current employment or his or her~~
20 ~~relation to his or her employment is essentially part time or~~
21 ~~intermittent, the monthly wage shall be determined by dividing by~~
22 ~~twelve the total wages earned, including overtime, from all employment~~
23 ~~in any twelve successive calendar months preceding the injury which~~
24 ~~fairly represent the claimant's employment pattern.~~

25 ~~(3) If, within the twelve months immediately preceding the injury,~~
26 ~~the worker has received from the employer at the time of injury a bonus~~
27 ~~as part of the contract of hire, the average monthly value of such~~
28 ~~bonus shall be included in determining the worker's monthly wages.~~

29 ~~(4) In cases where a wage has not been fixed or cannot be~~
30 ~~reasonably and fairly determined, the monthly wage shall be computed on~~
31 ~~the basis of the usual wage paid other employees engaged in like or~~
32 ~~similar occupations where the wages are fixed.)) "Wages" means the~~
33 ~~gross taxable monetary compensation paid for by the employer that is~~
34 ~~payable on an hourly, daily, weekly, monthly, or piecework basis and~~
35 ~~which is spendable by the worker at the end of each pay period. The~~
36 ~~worker's monthly wage shall be determined by dividing by twelve the~~
37 ~~total wages earned from all employment, including cash bonuses and~~
38 ~~overtime pay, in any four successive quarters in the twenty-four months~~

1 preceding the injury or occupational disease that most reasonably
2 represents the worker's wages.

3 (a) Tips shall be considered wages only to the extent that such
4 tips are reported to the employer for federal income tax purposes.

5 (b) Wages shall include the actual value of board, housing, and
6 fuel received from the employer as part of the contract of hire and for
7 which an internal revenue service form 1099 is required. This
8 subsection does not apply during any period in which the employer
9 continues to provide, through a past or current payment, board,
10 housing, and/or fuel that were provided to the employee at the time of
11 the injury or occupational disease.

12 (c) Wages shall not include fringe benefits which are any
13 consideration given to a worker in addition to wages as defined in this
14 section including, but not limited to: Employer payments for or
15 contributions for a retirement plan; pension plan; profit sharing;
16 stock options; medical, dental, and/or vision insurance; employee
17 assistance plan; substance abuse or mental health treatment or
18 insurance; life insurance; training; short-term or long-term
19 disability; social security; or other employee or beneficiary benefit
20 plan for the employee's or beneficiary's benefit.

21 (2) In cases where the worker is self-employed or the worker's
22 monthly wage cannot be reasonably determined under subsection (1) of
23 this section due to the worker sustaining an injury less than one year
24 after beginning employment that both the worker and the employer intend
25 to be continuous and lasting without limit into the foreseeable future,
26 and which provides wages as defined in subsection (1) of this section,
27 on an annualized basis, of greater than one hundred fifty percent of
28 wages earned by the worker in the twelve months prior to beginning such
29 employment, the monthly wage shall be computed on the basis of the
30 usual wage paid other employees of the employer at the time of injury
31 who perform like or similar job duties with like or similar work
32 patterns or, if none exist, other employees in the worker's labor
33 market who perform like or similar job duties with like or similar work
34 patterns.

35 (3) If the employer cannot obtain sufficient accurate information
36 to calculate the amount of wages before it must first pay temporary
37 total disability compensation, it may make payments provisionally based
38 upon claimant's wages on the date of injury.

1 **Sec. 2.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
2 as follows:

3 (1) One of the primary purposes of this title is to enable the
4 injured worker to become employable at gainful employment. To this
5 end, the department or self-insurers shall utilize the services of
6 individuals and organizations, public or private, whose experience,
7 training, and interests in vocational rehabilitation and retraining
8 qualify them to lend expert assistance to the supervisor of industrial
9 insurance in such programs of vocational rehabilitation as may be
10 reasonable to make the worker employable consistent with his or her
11 physical and mental status. Where, after evaluation and recommendation
12 by such individuals or organizations and prior to final evaluation of
13 the worker's permanent disability and in the sole opinion of the
14 supervisor or supervisor's designee, whether or not medical treatment
15 has been concluded, vocational rehabilitation is both necessary and
16 likely to enable the injured worker to become employable at gainful
17 employment, the supervisor or supervisor's designee may, in his or her
18 sole discretion, pay or, if the employer is a self-insurer, direct the
19 self-insurer to pay the cost as provided in subsection (3) of this
20 section.

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

- 25 (a) Return to the previous job with the same employer;
- 26 (b) Modification of the previous job with the same employer
27 including transitional return to work;
- 28 (c) A new job with the same employer in keeping with any
29 limitations or restrictions;
- 30 (d) Modification of a new job with the same employer including
31 transitional return to work;
- 32 (e) Modification of the previous job with a new employer;
- 33 (f) A new job with a new employer or self-employment based upon
34 transferable skills;
- 35 (g) Modification of a new job with a new employer;
- 36 (h) A new job with a new employer or self-employment involving on-
37 the-job training;
- 38 (i) Short-term retraining and job placement.

1 (3)(a) Except as provided in (b) of this subsection, costs for
2 vocational rehabilitation benefits allowed by the supervisor or
3 supervisor's designee under subsection (1) of this section may include
4 the cost of books, tuition, fees, supplies, equipment, transportation,
5 child or dependent care, and other necessary expenses for any such
6 worker in an amount not to exceed three thousand dollars in any fifty-
7 two week period (~~except as authorized by RCW 51.60.060~~), and the cost
8 of continuing the temporary total disability compensation under RCW
9 51.32.090 while the worker is actively and successfully undergoing a
10 formal program of vocational rehabilitation.

11 (b) Beginning with vocational rehabilitation plans approved on or
12 after July 1, 1999, costs for vocational rehabilitation benefits
13 allowed by the supervisor or supervisor's designee under subsection (1)
14 of this section may include the cost of books, tuition, fees, supplies,
15 equipment, child or dependent care, and other necessary expenses for
16 any such worker in an amount not to exceed (~~four~~) five thousand
17 dollars in any fifty-two week period (~~except as authorized by RCW~~
18 ~~51.60.060~~), and the cost of transportation and continuing the
19 temporary total disability compensation under RCW 51.32.090 while the
20 worker is actively and successfully undergoing a formal program of
21 vocational rehabilitation.

22 (c) The expenses allowed under (a) or (b) of this subsection may
23 include training fees for on-the-job training and the cost of
24 furnishing tools and other equipment necessary for self-employment or
25 reemployment. However, compensation or payment of retraining with job
26 placement expenses under (a) or (b) of this subsection may not be
27 authorized for a period of more than fifty-two weeks, except that such
28 period may, in the sole discretion of the supervisor after his or her
29 review, be extended for an additional fifty-two weeks or portion
30 thereof by written order of the supervisor.

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

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

37 (4) In addition to the vocational rehabilitation expenditures
38 provided for under subsection (3) of this section, an additional five
39 thousand dollars may, upon authorization of the supervisor or the

1 supervisor's designee, be expended for: (a) Accommodations for an
2 injured worker that are medically necessary for the worker to
3 participate in an approved retraining plan; and (b) accommodations
4 necessary to perform the essential functions of an occupation in which
5 an injured worker is seeking employment, consistent with the retraining
6 plan or the recommendations of a vocational evaluation. The injured
7 worker's attending physician must verify the necessity of the
8 modifications or accommodations. The total expenditures authorized in
9 this subsection and the expenditures authorized under RCW 51.32.250
10 shall not exceed five thousand dollars.

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

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

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

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

32 NEW SECTION. **Sec. 3.** The department of labor and industries may
33 adopt rules necessary to implement section 1 of this act.

34 NEW SECTION. **Sec. 4.** Section 1 of this act takes effect July 1,
35 2002, and applies only to claims filed on or after July 1, 2002.

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