
SUBSTITUTE SENATE BILL 5303

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions
(originally sponsored by Senators Prentice, Winsley, Costa, Franklin,
Roach, Kline, Kastama, Fairley, Patterson, Regala and Gardner)

READ FIRST TIME 02/26/01.

1 AN ACT Relating to the definition of gainful employment for
2 purposes of vocational rehabilitation under industrial insurance;
3 amending RCW 51.32.095; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to provide injured
6 workers with vocational rehabilitation and retraining services when
7 such services are likely to allow the workers to resume work at wages
8 as close as possible to their preinjury wages. The purpose of this act
9 is to specify that, in exercising its discretion in providing
10 vocational rehabilitation services, the department of labor and
11 industries will use the capacity to earn seventy percent of the
12 preinjury wage as the standard for determining whether an injured
13 worker should be eligible for vocational rehabilitation services and
14 retraining. The legislature intends this eligibility standard to apply
15 only to vocational rehabilitation under RCW 51.32.095 and does not
16 intend this standard to apply to any other section of the state's
17 industrial insurance code. The legislature further intends that this
18 act apply prospectively rather than retrospectively.

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 thousand dollars in any
17 fifty-two week period (~~except as authorized by RCW 51.60.060,~~) and
18 the cost of transportation and continuing the temporary total
19 disability compensation under RCW 51.32.090 while the worker is
20 actively and successfully undergoing a formal program of vocational
21 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 (9) For the purposes of this section, "gainful employment" means
33 employment or self-employment in which the monthly wages, including
34 benefits provided by the employer, are equal to or greater than seventy
35 percent of the monthly wages earned by the worker at the time of injury
36 or the legal minimum wage, whichever is greater. This subsection

1 applies only to claims filed on or after the effective date of this
2 act.

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