
HOUSE BILL 1588

State of Washington 58th Legislature 2003 Regular Session

By Representatives Kenney, Conway, Campbell, Wood and Simpson

Read first time 01/31/2003. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the duty of good faith and fair dealing to
2 injured workers; amending RCW 51.48.080, 51.28.050, and 51.28.055;
3 adding a new section to chapter 51.48 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.48 RCW
6 to read as follows:

7 (1) The department, employer, employer representative, and other
8 persons have a duty to injured workers of good faith and fair dealing
9 relating to all aspects of this title. This duty is violated if:

10 (a)(i) The department, employer, or employer representative denies
11 or delays payment of benefits, including medical benefits, without a
12 reasonable basis; and

13 (ii) The department, employer, or employer representative knew, or
14 should have known, there was not a reasonable basis for denying or
15 delaying payment of benefits. A reasonable basis is an objective
16 standard based on the information available at the time.

17 (b) An employer, employer representative, or any person:

18 (i) Induces or coerces a worker not to report an industrial
19 accident or file an application for benefits;

1 (ii) Induces or coerces a worker to treat an industrial accident as
2 an off-the-job injury;

3 (iii) Persuades a worker to accept less than the compensation due
4 under this title;

5 (iv) Induces or coerces a worker who is entitled to temporary total
6 disability under this title to return to work in contravention of RCW
7 51.32.090(4); or

8 (v) Fails to comply with the rules of the department regarding
9 reports or other requirements necessary for adjudicating claims under
10 this title.

11 (2) The department may adopt by rule additional applications of the
12 duty of good faith and fair dealing. In adopting a rule under this
13 subsection, the department shall consider, among other factors,
14 recognized and approved claim processing practices within the insurance
15 industry, the department's own experience, and the industrial insurance
16 and insurance laws and rules of the state.

17 (3) The department shall investigate each alleged violation of this
18 section upon the filing of a written complaint or on its own motion.
19 Violations shall be determined in the sole discretion of the director
20 or designee. An order conforming with RCW 51.52.050 determining
21 whether a violation has occurred shall be issued within thirty days of
22 a request for an investigation.

23 (4) If the department, employer, employer representative, or other
24 person violates any provision of this section, the violator shall pay
25 a civil penalty of one thousand dollars for each offense upon order of
26 the director. The penalty shall accrue for the benefit of:

27 (a) The affected worker if the violation pertains to a specific
28 claim; or

29 (b) To the department to be used specifically for worker safety
30 programs if the penalty is based on a history or pattern of violations.

31 **Sec. 2.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read
32 as follows:

33 Except as provided in section 1(1)(b)(v) of this act, every person,
34 firm or corporation who violates or fails to obey, observe or comply
35 with any rule of the department (~~promulgated~~) adopted under
36 (~~authority of~~) this title, shall be subject to a penalty of not (~~to~~
37 exceed) more than five hundred dollars.

1 **Sec. 3.** RCW 51.28.050 and 1984 c 159 s 1 are each amended to read
2 as follows:

3 No application shall be valid or claim thereunder enforceable
4 unless filed within one year after the day upon which the injury
5 occurred or the rights of dependents or beneficiaries accrued, except
6 as provided in RCW 51.28.055. An application is exempt from the
7 limitation imposed by this section if the failure to file the
8 application or take action to enforce a claim thereunder resulted from
9 an act prohibited by section 1 of this act.

10 **Sec. 4.** RCW 51.28.055 and 1984 c 159 s 2 are each amended to read
11 as follows:

12 Claims for occupational disease or infection to be valid and
13 compensable must be filed within two years following the date the
14 worker had written notice from a physician: (1) Of the existence of
15 his or her occupational disease, and (2) that a claim for disability
16 benefits may be filed. The notice shall also contain a statement that
17 the worker has two years from the date of the notice to file a claim.
18 The physician shall file the notice with the department. The
19 department shall send a copy to the worker and to the self-insurer if
20 the worker's employer is self-insured. However, a claim is valid if it
21 is filed within two years from the date of death of the worker
22 suffering from an occupational disease. An application is exempt from
23 the limitation imposed by this section if the failure to file the
24 application or take action to enforce a claim thereunder resulted from
25 an act prohibited by section 1 of this act.

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