
ENGROSSED SUBSTITUTE SENATE BILL 6395

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Commerce & Trade (originally sponsored by Senator Honeyford)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to applications for compensation under the
2 industrial insurance system; amending RCW 51.28.010, 51.28.055,
3 51.28.040, and 51.32.160; and adding a new section to chapter 51.28
4 RCW.

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

6 **Sec. 1.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
7 as follows:

8 (1) Whenever any accident occurs to any worker it (~~shall be~~) is
9 the duty of (~~such~~) the worker or someone (~~in~~) on his or her behalf
10 to (~~forthwith~~) report (~~such~~) the accident to his or her employer,
11 superintendent, or supervisor in charge of the work(~~, and~~) within
12 five working days after the accident.

13 (2) When an employer receives a notice of an accident as required
14 under subsection (1) of this section, it is the duty of the employer to
15 at once report such accident and the injury resulting therefrom to the
16 department pursuant to RCW 51.28.025 where the worker has received
17 treatment from a physician, has been hospitalized, disabled from work,
18 or has died as the apparent result of such accident and injury.

1 ((+2)) (3) Upon receipt of ((such)) the notice of accident
2 required under RCW 51.28.025, the department shall immediately forward
3 to the worker or his or her beneficiaries or dependents notification,
4 in nontechnical language, of their rights under this title. The notice
5 must specify the worker's right to receive health services from a
6 physician of the worker's choice under RCW 51.36.010, including
7 chiropractic services under RCW 51.36.015, and must list the types of
8 providers authorized to provide these services.

9 **Sec. 2.** RCW 51.28.055 and 2003 2nd sp.s. c 2 s 1 are each amended
10 to read as follows:

11 (1) Whenever a physician notifies a worker of the existence of an
12 occupational disease, the worker or someone on his or her behalf must
13 report the existence of the disease to his or her employer,
14 superintendent, or supervisor in charge of the work within five working
15 days after the notification.

16 (2) Except as provided in subsection ((+2)) (3) of this section
17 for claims filed for occupational hearing loss, claims for occupational
18 disease or infection to be valid and compensable must be filed within
19 two years following the date the physician notifies the worker (~~had~~
20 ~~written notice from a physician: (a))~~ of the existence of his or her
21 occupational disease(~~, and (b) that a claim for disability benefits~~
22 ~~may be filed. The notice shall also contain a statement that the~~
23 ~~worker has two years from the date of the notice to file a claim. The~~
24 ~~physician shall file the notice with the department. The department~~
25 ~~shall send a copy to the worker and to the self insurer if the worker's~~
26 ~~employer is self insured)). However, a claim is valid if it is filed~~
27 within two years ((~~from~~)) after the date of death of the worker
28 suffering from an occupational disease.

29 ((+2)) (3)(a) Except as provided in (b) of this subsection, to be
30 valid and compensable, claims for hearing loss due to occupational
31 noise exposure must be filed within two years ((~~of~~)) after the date of
32 the worker's last injurious exposure to occupational noise in
33 employment covered under this title or within one year ((~~of~~)) after
34 September 10, 2003, whichever is later.

35 (b) A claim for hearing loss due to occupational noise exposure
36 that is not timely filed under (a) of this subsection ((~~can only~~)) may
37 be allowed only for medical aid benefits under chapter 51.36 RCW.

1 (~~(3)~~) (4) The department may adopt rules to implement this
2 section.

3 **Sec. 3.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended to
4 read as follows:

5 (~~(If change of circumstances warrants an increase or rearrangement~~
6 ~~of compensation, like application shall be made therefor.)) Where the
7 worker's application to reopen a claim has been granted under RCW
8 51.32.160, compensation and other benefits, if in order, shall be
9 allowed for periods of time up to sixty days prior to the receipt of
10 such application.~~

11 **Sec. 4.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read
12 as follows:

13 (1)(a) If aggravation, diminution, or termination of disability
14 takes place, the director may, upon the application of the beneficiary,
15 made within seven years from the date the first closing order becomes
16 final, or at any time upon his or her own motion, readjust the rate of
17 compensation in accordance with the rules in this section provided for
18 the same, or in a proper case terminate the payment: PROVIDED, That
19 the director may, upon application of the worker made at any time,
20 provide proper and necessary medical and surgical services as
21 authorized under RCW 51.36.010. The department shall promptly mail a
22 copy of the application to the employer at the employer's last known
23 address as shown by the records of the department.

24 (b) "Closing order" as used in this section means an order based on
25 factors which include medical recommendation, advice, or examination.

26 (c) Applications for benefits where the claim has been closed
27 without medical recommendation, advice, or examination are not subject
28 to the seven year limitation of this section. The preceding sentence
29 shall not apply to any closing order issued prior to July 1, 1981.
30 First closing orders issued between July 1, 1981, and July 1, 1985,
31 shall, for the purposes of this section only, be deemed issued on July
32 1, 1985. The time limitation of this section shall be ten years in
33 claims involving loss of vision or function of the eyes.

34 (d)(i) With respect to an application to reopen a claim filed on or
35 after July 1, 1988, but before the effective date of this section, if
36 an order denying (~~(an)~~) the application to reopen (~~(filed on or after~~

1 ~~July 1, 1988,~~) is not issued within ninety days of receipt of such
2 application by the self-insured employer or the department, such
3 application shall be deemed granted. (~~However,~~)

4 (ii) With respect to an application to reopen a claim filed on or
5 after the effective date of this section:

6 (A) The self-insured employer or department, as applicable, must
7 notify the worker by mail at the worker's last known address as shown
8 by department records that the application has been received.

9 (B) If an order denying or granting the application is not issued
10 within ninety days of mailing notice to the worker of receipt of the
11 application, such application shall be deemed granted.

12 (iii) For good cause, the department or self-insurer may extend the
13 time for making the final determination on the application filed under
14 (d)(i) or (ii) of this subsection for an additional sixty days.

15 (2) If a worker receiving a pension for total disability returns to
16 gainful employment for wages, the director may suspend or terminate the
17 rate of compensation established for the disability without producing
18 medical evidence that shows that a diminution of the disability has
19 occurred.

20 (3) No act done or ordered to be done by the director, or the
21 department prior to the signing and filing in the matter of a written
22 order for such readjustment shall be grounds for such readjustment.

23 NEW SECTION. Sec. 5. A new section is added to chapter 51.28 RCW
24 to read as follows:

25 The department of labor and industries shall monitor the number of
26 accidents and occupational diseases that are reported to the employer
27 after the five-day period under sections 1 and 2 of this act has
28 elapsed. The department shall determine the reason or reasons the
29 employee reported the accident or occupational disease past the five-
30 day period. The department shall report on its findings annually, with
31 the first report due December 15, 2004.

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