

SHB 2073 - H AMD 127

By Representative Conway

ADOPTED 03/08/2007

1 Strike everything after the enacting clause and insert the
2 following:

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

5 (1) One of the primary purposes of this title is to enable the
6 injured worker to become employable at gainful employment. To this
7 end, the department or self-insurers shall utilize the services of
8 individuals and organizations, public or private, whose experience,
9 training, and interests in vocational rehabilitation and retraining
10 qualify them to lend expert assistance to the supervisor of industrial
11 insurance in such programs of vocational rehabilitation as may be
12 reasonable to make the worker employable consistent with his or her
13 physical and mental status. Where, after evaluation and recommendation
14 by such individuals or organizations and prior to final evaluation of
15 the worker's permanent disability and in the sole opinion of the
16 supervisor or supervisor's designee, whether or not medical treatment
17 has been concluded, vocational rehabilitation is both necessary and
18 likely to enable the injured worker to become employable at gainful
19 employment, the supervisor or supervisor's designee may, in his or her
20 sole discretion, pay or, if the employer is a self-insurer, direct the
21 self-insurer to pay the cost as provided in subsection (3) of this
22 section or section 2 of this act, as appropriate. An injured worker
23 may not participate in vocational rehabilitation under this section or
24 section 2 of this act if such participation would result in a payment
25 of benefits as described in RCW 51.32.240(5), and any benefits so paid
26 shall be recovered according to the terms of that section.

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

- 1 (a) Return to the previous job with the same employer;
- 2 (b) Modification of the previous job with the same employer
3 including transitional return to work;
- 4 (c) A new job with the same employer in keeping with any
5 limitations or restrictions;
- 6 (d) Modification of a new job with the same employer including
7 transitional return to work;
- 8 (e) Modification of the previous job with a new employer;
- 9 (f) A new job with a new employer or self-employment based upon
10 transferable skills;
- 11 (g) Modification of a new job with a new employer;
- 12 (h) A new job with a new employer or self-employment involving on-
13 the-job training;
- 14 (i) Short-term retraining and job placement.
- 15 (3)(a) (~~Except as provided in (b) of this subsection~~) For
16 vocational plans approved prior to July 1, 1999, costs for vocational
17 rehabilitation benefits allowed by the supervisor or supervisor's
18 designee under subsection (1) of this section may include the cost of
19 books, tuition, fees, supplies, equipment, transportation, child or
20 dependent care, and other necessary expenses for any such worker in an
21 amount not to exceed three thousand dollars in any fifty-two week
22 period except as authorized by RCW 51.60.060, and the cost of
23 continuing the temporary total disability compensation under RCW
24 51.32.090 while the worker is actively and successfully undergoing a
25 formal program of vocational rehabilitation.
- 26 (b) (~~Beginning with vocational rehabilitation plans approved on or~~
27 ~~after~~) When the department has approved a vocational plan for a worker
28 between July 1, 1999, through December 31, 2007, costs for vocational
29 rehabilitation benefits allowed by the supervisor or supervisor's
30 designee under subsection (1) of this section may include the cost of
31 books, tuition, fees, supplies, equipment, child or dependent care, and
32 other necessary expenses for any such worker in an amount not to exceed
33 four thousand dollars in any fifty-two week period except as authorized
34 by RCW 51.60.060, and the cost of transportation and continuing the
35 temporary total disability compensation under RCW 51.32.090 while the
36 worker is actively and successfully undergoing a formal program of
37 vocational rehabilitation.

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

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

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

16 (4) In addition to the vocational rehabilitation expenditures
17 provided for under subsection (3) of this section and section 2 of this
18 act, an additional five thousand dollars may, upon authorization of the
19 supervisor or the supervisor's designee, be expended for: (a)
20 Accommodations for an injured worker that are medically necessary for
21 the worker to participate in an approved retraining plan; and (b)
22 accommodations necessary to perform the essential functions of an
23 occupation in which an injured worker is seeking employment, consistent
24 with the retraining plan or the recommendations of a vocational
25 evaluation. The injured worker's attending physician must verify the
26 necessity of the modifications or accommodations. The total
27 expenditures authorized in this subsection and the expenditures
28 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

29 (5) When the department has approved a vocational plan for a worker
30 prior to January 1, 2008, regardless of whether the worker has begun
31 participating in the approved plan, costs for vocational rehabilitation
32 benefits allowed by the supervisor or supervisor's designee under
33 subsection (1) of this section are limited to those provided under
34 subsections (3) and (4) of this section.

35 For vocational plans approved for a worker between January 1, 2008,
36 through June 30, 2013, total vocational costs allowed by the supervisor
37 or supervisor's designee under subsection (1) of this section shall be

1 limited to those provided under the pilot program established in
2 section 2 of this act, and vocational rehabilitation services shall
3 conform to the requirements in section 2 of this act.

4 (6) The department shall establish criteria to monitor the quality
5 and effectiveness of rehabilitation services provided by the
6 individuals and organizations used under subsection (1) of this section
7 and under section 2 of this act. The state fund shall make referrals
8 for vocational rehabilitation services based on these performance
9 criteria.

10 ~~((+6+))~~ (7) The department shall engage in, where feasible and
11 cost-effective, a cooperative program with the state employment
12 security department to provide job placement services under this
13 section and section 2 of this act.

14 ~~((+7+))~~ (8) The benefits in this section and section 2 of this act
15 shall be provided for the injured workers of self-insured employers.
16 Self-insurers shall report both benefits provided and benefits denied
17 under this section and section 2 of this act in the manner prescribed
18 by the department by rule adopted under chapter 34.05 RCW. The
19 director may, in his or her sole discretion and upon his or her own
20 initiative or at any time that a dispute arises under this section or
21 section 2 of this act, promptly make such inquiries as circumstances
22 require and take such other action as he or she considers will properly
23 determine the matter and protect the rights of the parties.

24 ~~((+8+))~~ (9) Except as otherwise provided in this section or section
25 2 of this act, the benefits provided for in this section and section 2
26 of this act are available to any otherwise eligible worker regardless
27 of the date of industrial injury. However, claims shall not be
28 reopened solely for vocational rehabilitation purposes.

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.32 RCW
30 to read as follows:

31 (1)(a) The legislature intends to create improved vocational
32 outcomes for Washington state injured workers and employers through
33 legislative and regulatory change under a pilot program for the period
34 of January 1, 2008, through June 30, 2013. This pilot vocational
35 system is intended to allow opportunities for eligible workers to
36 participate in meaningful retraining in high demand occupations,
37 improve successful return to work and achieve positive outcomes for

1 workers, reduce the incidence of repeat vocational services, increase
2 accountability and responsibility, and improve cost predictability. To
3 facilitate the study and evaluation of the results of the proposed
4 changes, the department shall establish the temporary funding of
5 certain state fund vocational costs through the medical aid account to
6 ensure the appropriate assessments to employers for the costs of their
7 claims for vocational services in accordance with section 3 of this
8 act.

9 (b) An independent review and study of the effects of the pilot
10 program shall be conducted to determine whether it has achieved the
11 appropriate outcomes at reasonable cost to the system. The review
12 shall include, at a minimum, a report on the department's performance
13 with regard to the provision of vocational services, the skills
14 acquired by workers who receive retraining services, the types of
15 training programs approved, whether the workers are employed, at what
16 jobs and wages after completion of the training program and at various
17 times subsequent to their claim closure, the number and demographics of
18 workers who choose the option provided in subsection (4)(b) of this
19 section, and their employment and earnings status at various times
20 subsequent to claim closure. The department may adopt rules, in
21 collaboration with the subcommittee created under (c)(iii) of this
22 subsection, to further define the scope and elements of the required
23 study. Reports of the independent researcher are due on December 1,
24 2010, December 1, 2011, and December 1, 2012.

25 (c) In implementing the pilot program, the department shall:

26 (i) Establish a vocational initiative project that includes
27 participation by the department as a partner with WorkSource, the
28 established state system that administers the federal workforce
29 investment act of 1998. As a partner, the department shall place
30 vocational professional full-time employees at pilot WorkSource
31 locations; refer some workers for vocational services to these
32 vocational professionals; and work with employers in work source pilot
33 areas to market the benefits of on-the-job training programs and with
34 community colleges to reserve slots in high demand programs. These on-
35 the-job training programs and community college slots may be considered
36 by both department and private sector vocational professionals for
37 vocational plan development. The department will also assist
38 stakeholders in developing additional vocational training programs in

1 various industries, including but not limited to agriculture and
2 construction. These programs will expand the choices available to
3 injured workers in developing their vocational training plans with the
4 assistance of vocational professionals.

5 (ii) Develop and maintain a register of state fund and self-
6 insured workers who have been retrained or have selected any of the
7 vocational options described in this section for at least the duration
8 of the pilot program.

9 (iii) Create a vocational rehabilitation subcommittee made up of
10 members appointed by the director for at least the duration of the
11 pilot program. This subcommittee shall provide the business and labor
12 partnership needed to maintain focus on the intent of the pilot
13 program, as described in this section, and provide consistency and
14 transparency to the development of rules and policies. The
15 subcommittee shall report to the director at least annually and
16 recommend to the director and the legislature any additional statutory
17 changes needed, which may include extension of the pilot period. The
18 subcommittee shall provide input and oversight with the department
19 concerning the study required under (b) of this subsection. The
20 subcommittee shall provide recommendations for additional changes or
21 incentives for injured workers to return to work with their employer of
22 injury.

23 (iv) The department shall develop an annual report concerning
24 Washington's workers' compensation vocational rehabilitation system to
25 the legislature and to the subcommittee by December 1, 2009, and
26 annually thereafter with the final report due by December 1, 2012. The
27 annual report shall include the number of workers who have participated
28 in more than one vocational training plan beginning with plans approved
29 on January 1, 2008, and in which industries those workers were
30 employed. The final report shall include the department's assessment
31 and recommendations for further legislative action, in collaboration
32 with the subcommittee.

33 (2)(a) For the purposes of this section, the day the worker
34 commences vocational plan development means the date the department or
35 self-insurer notifies the worker of his or her eligibility for plan
36 development services.

37 (b) When vocational rehabilitation is both necessary and likely to
38 make the worker employable at gainful employment, he or she shall be

1 provided with services necessary to develop a vocational plan that, if
2 completed, would render the worker employable. The vocational
3 professional assigned to the claim shall, at the initial meeting with
4 the worker, fully inform the worker of the return-to-work priorities
5 set forth in RCW 51.32.095(2) and of his or her rights and
6 responsibilities under the workers' compensation vocational system.
7 The department shall provide tools to the vocational professional for
8 communicating this and other information required by RCW 51.32.095 and
9 this section to the worker.

10 (c) On the date the worker commences vocational plan development,
11 the department shall also inform the employer in writing of the
12 employer's right to make a valid return-to-work offer during the first
13 fifteen days following the commencement of vocational plan development.
14 To be valid, the offer must be for bona fide employment with the
15 employer of injury, consistent with the worker's documented physical
16 and mental restrictions as provided by the worker's health care
17 provider. When the employer makes a valid return-to-work offer, the
18 vocational plan development services and temporary total disability
19 compensation shall be terminated effective the starting date for the
20 job without regard to whether the worker accepts the return-to-work
21 offer. Following the fifteen-day period, the employer may still
22 provide, and the worker may accept, any valid return-to-work offer.
23 The worker's acceptance of such an offer shall result in the
24 termination of vocational plan development or implementation services
25 and temporary total disability compensation effective the day the
26 employment begins.

27 (3)(a) All vocational plans must contain an accountability
28 agreement signed by the worker detailing expectations regarding
29 progress, attendance, and other factors influencing successful
30 participation in the plan. Failure to abide by the agreed expectations
31 shall result in suspension of vocational benefits pursuant to RCW
32 51.32.110.

33 (b) Any formal education included as part of the vocational plan
34 must be for an accredited or licensed program or other program approved
35 by the department. The department shall develop rules that provide
36 criteria for the approval of nonaccredited or unlicensed programs.

37 (c) The vocational plan for an individual worker must be completed
38 and submitted to the department within ninety days of the day the

1 worker commences vocational plan development. The department may
2 extend the ninety days for good cause. Criteria for good cause shall
3 be provided in rule. The frequency and reasons for good cause
4 extensions shall be reported to the subcommittee created under
5 subsection (1)(c)(iii) of this section.

6 (d) Costs for the vocational plan may include books, tuition, fees,
7 supplies, equipment, child or dependent care, training fees for on-the-
8 job training, the cost of furnishing tools and other equipment
9 necessary for self-employment or reemployment, and other necessary
10 expenses in an amount not to exceed twelve thousand dollars. This
11 amount shall be adjusted effective July 1 of each year for vocational
12 plans or retraining benefits available under subsection (4)(b) of this
13 section approved on or after this date but before June 30 of the next
14 year based on the average percentage change in tuition for the next
15 fall quarter for all Washington state community colleges.

16 (e) The duration of the vocational plan shall not exceed two years
17 from the date the plan is implemented. The worker shall receive
18 temporary total disability compensation under RCW 51.32.090 and the
19 cost of transportation while he or she is actively and successfully
20 participating in a vocational plan.

21 (f) If the worker is required to reside away from his or her
22 customary residence, the reasonable cost of board and lodging shall
23 also be paid.

24 (4) Vocational plan development services shall be completed within
25 ninety days of commencing. During vocational plan development the
26 worker shall, with the assistance of a vocational professional,
27 participate in vocational counseling and occupational exploration to
28 include, but not be limited to, identifying possible job goals,
29 training needs, resources, and expenses, consistent with the worker's
30 physical and mental status. A vocational rehabilitation plan shall be
31 developed by the worker and the vocational professional and submitted
32 to the department or self-insurer. Following this submission, the
33 worker shall elect one of the following options:

34 (a) Option 1: The department or self-insurer implements and the
35 worker participates in the vocational plan developed by the vocational
36 professional and approved by the worker and the department or
37 self-insurer. For state fund claims, the department must review and
38 approve the vocational plan before implementation may begin. If the

1 department takes no action within fifteen days, the plan is deemed
2 approved. The worker may, within fifteen days of approval of the plan
3 by the department, elect option 2.

4 (i) Following successful completion of the vocational plan, any
5 subsequent assessment of whether vocational rehabilitation is both
6 necessary and likely to enable the injured worker to become employable
7 at gainful employment under RCW 51.32.095(1) shall include
8 consideration of transferable skills obtained in the vocational plan.

9 (ii) If a vocational plan is successfully completed on a claim
10 which is thereafter reopened as provided in RCW 51.32.160, the cost and
11 duration available for any subsequent vocational plan is limited to
12 that in subsection (3)(d) and (e) of this section, less that previously
13 expended.

14 (b) Option 2: The worker declines further vocational services
15 under the claim and receives an amount equal to six months of temporary
16 total disability compensation under RCW 51.32.090. The award is
17 payable in biweekly payments in accordance with the schedule of
18 temporary total disability payments, until such award is paid in full.
19 These payments shall not include interest on the unpaid balance.
20 However, upon application by the worker, and at the discretion of the
21 department, the compensation may be converted to a lump sum payment.
22 The vocational costs defined in subsection (3)(d) of this section shall
23 remain available to the worker, upon application to the department or
24 self-insurer, for a period of five years. The vocational costs shall,
25 if expended, be available for programs or courses at any accredited or
26 licensed institution or program from a list of those approved by the
27 department for tuition, books, fees, supplies, equipment, and tools,
28 without department or self-insurer oversight. The department shall
29 issue an order as provided in RCW 51.52.050 confirming the option 2
30 election, setting a payment schedule, and terminating temporary total
31 disability benefits. The department shall thereafter close the claim.

32 (i) If within five years from the date the option 2 order becomes
33 final, the worker is subsequently injured or suffers an occupational
34 disease or reopens the claim as provided in RCW 51.32.160, and
35 vocational rehabilitation is found both necessary and likely to enable
36 the injured worker to become employable at gainful employment under RCW
37 51.32.095(1), the duration of any vocational plan under subsection
38 (3)(e) of this section shall not exceed eighteen months.

1 (ii) If the available vocational costs are utilized by the worker,
2 any subsequent assessment of whether vocational rehabilitation is both
3 necessary and likely to enable the injured worker to become employable
4 at gainful employment under RCW 51.32.095(1) shall include
5 consideration of the transferable skills obtained.

6 (iii) If the available vocational costs are utilized by the worker
7 and the claim is thereafter reopened as provided in RCW 51.32.160, the
8 cost available for any vocational plan is limited to that in subsection
9 (3)(d) of this section less that previously expended.

10 (iv) Option 2 may only be elected once per worker.

11 (c) The director, in his or her sole discretion, may provide the
12 worker vocational assistance not to exceed that in subsection (3) of
13 this section, without regard to the worker's prior option selection or
14 benefits expended, where vocational assistance would prevent permanent
15 total disability under RCW 51.32.060.

16 (5)(a) As used in this section, "vocational plan interruption"
17 means an occurrence which disrupts the plan to the extent the
18 employability goal is no longer attainable. "Vocational plan
19 interruption" does not include institutionally scheduled breaks in
20 educational programs, occasional absence due to illness, or
21 modifications to the plan which will allow it to be completed within
22 the cost and time provisions of subsection (3)(d) and (e) of this
23 section.

24 (b) When a vocational plan interruption is beyond the control of
25 the worker, the department or self-insurer shall recommence plan
26 development. If necessary to complete vocational services, the cost
27 and duration of the plan may include credit for that expended prior to
28 the interruption. A vocational plan interruption is considered outside
29 the control of the worker when it is due to the closure of the
30 accredited institution, when it is due to a death in the worker's
31 immediate family, or when documented changes in the worker's accepted
32 medical conditions prevent further participation in the vocational
33 plan.

34 (c) When a vocational plan interruption is the result of the
35 worker's actions, the worker's entitlement to benefits shall be
36 suspended in accordance with RCW 51.32.110. If plan development or
37 implementation is recommenced, the cost and duration of the plan shall
38 not include credit for that expended prior to the interruption. A

1 vocational plan interruption is considered a result of the worker's
2 actions when it is due to the failure to meet attendance expectations
3 set by the training or educational institution, failure to achieve
4 passing grades or acceptable performance review, unaccepted or
5 postinjury conditions that prevent further participation in the
6 vocational plan, or the worker's failure to abide by the accountability
7 agreement per subsection (3)(a) of this section.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.32 RCW
9 to read as follows:

10 (1) Costs paid for vocational services and plans shall be
11 chargeable to the employer's cost experience or shall be paid by the
12 self-insurer, as the case may be. For state fund vocational plans
13 implemented on or after January 1, 2008, the costs may be paid from the
14 medical aid fund at the sole discretion of the director under the
15 following circumstances:

16 (a) The worker previously participated in a vocational plan or
17 selected a worker option as described in section 2(4) of this act;

18 (b) The worker's prior vocational plan or selected option was based
19 on an approved plan or option on or after January 1, 2008;

20 (c) For state fund employers, the date of injury or disease
21 manifestation of the subsequent claim is within the period of time used
22 to calculate their experience factor;

23 (d) The subsequent claim is for an injury or occupational disease
24 that resulted from employment and work-related activities beyond the
25 worker's documented restrictions.

26 (2) The vocational plan costs payable from the medical aid fund
27 shall include the costs of temporary total disability benefits, except
28 those payable from the supplemental pension fund, from the date the
29 vocational plan is implemented to the date the worker completes the
30 plan or ceases participation. The vocational costs paid from the
31 medical aid fund shall not be charged to the state fund employer's cost
32 experience.

33 (3) For the duration of the vocational pilot program, all expenses
34 to the medical aid fund resulting from the director's discretionary
35 decisions as provided in subsection (1) of this section shall be
36 separately documented as a medical aid fund expenditure and reported to
37 the vocational rehabilitation subcommittee and the legislature

1 annually. This report shall include the number of claims for which
2 relief to the state fund employer was provided and the average cost per
3 claim. A report to the vocational rehabilitation subcommittee and the
4 legislature shall also be made annually including the number of claims
5 and average cost per claim reported by self-insured employers for
6 claims meeting the requirements in subsection (1)(a), (b), and (d) of
7 this section.

8 NEW SECTION. **Sec. 4.** The department of labor and industries shall
9 adopt rules necessary to implement this act.

10 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2008.

11 NEW SECTION. **Sec. 6.** This act expires June 30, 2013."

12 Correct the title.

EFFECT: Requires the Department of Labor and Industries to assist stakeholders in developing vocational training programs in various industries, including but not limited to agriculture and construction. Prohibits a worker who has obtained workers' compensation benefits through willful misrepresentation from receiving vocational rehabilitation benefits. Removes the provisions that allowed self-insured employers to request reimbursement from the medical aid fund for the cost of vocational services in certain circumstances. Removes provisions that authorized the vocational rehabilitation subcommittee to make recommendations about assessments to self-insured employers.

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