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**Commerce & Labor Committee**

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**HB 2073**

**Brief Description:** Establishing a pilot program for vocational rehabilitation services.

**Sponsors:** Representatives Conway, Wood, Kenney, Moeller, Simpson and Ormsby; by request of Governor Gregoire.

**Brief Summary of Bill**

- Creates an industrial insurance vocational rehabilitation pilot program from January 1, 2008, until June 30, 2013.
- Increases allowable costs for vocational rehabilitation to \$12,000 and increases time for retraining to two years.
- Establishes time frames for the vocational plan development process.
- Creates options and benefits for workers who decline to participate in an approved vocational plan.
- Addresses issues related to vocational plan interruption.
- Limits the time and allowable costs for vocational rehabilitation in subsequent or re-opened claims when a worker has previously declined to participate in a vocational plan under the pilot program.

**Hearing Date:** 2/15/07

**Staff:** Sarah Beznoska (786-7109).

**Background:**

Industrial Insurance Act

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

One of the stated primary purposes of Washington's Industrial Insurance Act (Act) is to enable an injured worker to become employable at gainful employment. The Department of Labor and Industries (Department) pays, or directs self-insured employers to pay, the costs of vocational rehabilitation services when these services are necessary and likely to enable the injured worker to become employable at gainful employment. Costs are chargeable to a state fund employer's cost experience. Under Department rules, an injured worker is employable if the worker has the skills and training necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis, considering age, education, experience, and preexisting limitations or limitations due to the industrial injury.

### Vocational Rehabilitation

Under Department rules, an ability-to-work assessment is used to determine if an injured worker should receive vocational rehabilitation services. An ability-to-work assessment report must recommend one of the following:

- the injured worker is employable at gainful employment;
- vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment; or
- the injured worker is not likely to benefit from vocational services.

If vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment, vocational rehabilitation plan development services are authorized to obtain a vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for the worker. Vocational rehabilitation plan implementation and monitoring services follow plan development. A variety of reporting requirements apply at each step in the process.

Costs for vocational rehabilitation services include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses. The cap for these costs is \$4,000 in any 52-week period. A worker may also receive transportation costs. The Department may extend the time frame for an additional 52 weeks. If a worker is required to reside away from his or her customary residence while undergoing vocational rehabilitation, the reasonable costs of board and lodging must also be paid. A worker undergoing vocational rehabilitation is entitled to continuing time-loss compensation while actively and successfully undergoing vocational rehabilitation.

If a worker refuses or obstructs evaluation or examination for vocational rehabilitation purposes or does not cooperate in reasonable efforts at vocational rehabilitation, the Department or the self-insurer, may suspend any further action on any claim of the worker as long as refusal, obstruction, or non-cooperation continues. The Department or self-insurer may reduce, suspend, or deny any compensation for a period of refusal, obstruction, or non-cooperation.

### WorkSource

WorkSource is a joint venture to address employment needs in the state. WorkSource partners include state and local government agencies as well as local community based organizations that provide a wide range of employment and training-related services. WorkSource Centers provide information, technology, and career services for job seekers.

## **Summary of Bill:**

The Department of Labor and Industries (Department) is required to create a vocational rehabilitation pilot program from January 1, 2008, until June 30, 2013. The elements of the pilot apply to vocational plans approved between January 1, 2008, and June 20, 2013.

### **Vocational Rehabilitation Pilot Program**

#### Vocational Initiative Project

The Department must establish a vocational initiative project that includes a partnership between the Department and WorkSource. The Department must place full time vocational professionals at pilot WorkSource locations. The Department must refer some workers to the vocational professionals at pilot WorkSource locations.

The Department must work with employers in pilot WorkSource areas to market the benefits of on-the-job training programs. The Department also must work with community colleges to reserve slots in high demand programs that may be considered by the Department and private sector vocational professionals for vocational plan development.

#### Vocational Rehabilitation Subcommittee

The Department must create a vocational rehabilitation subcommittee. Members must be appointed by the Department for at least the duration of the pilot program. The subcommittee must provide the business and labor partnership needed to maintain focus on the intent of the pilot program. The subcommittee must provide consistency and transparency to the development of rules and policies.

The subcommittee must report to the Department at least annually and recommend to the Department and the Legislature any additional statutory changes needed, including extension of the pilot program.

#### Vocational Referral, Plan Development, and Approval

When vocational rehabilitation is necessary and likely to enable the injured worker to become employable at gainful employment, the worker must be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable.

Some changes are made in the vocational plan development process. At the initial meeting with the worker, the vocational professional assigned to the claim must inform the worker of return-to-work priorities and of the worker's rights and responsibilities. The Department must provide tools to the vocational professional to communicate this and other information to the worker.

On the same date the Department refers a case to a vocational professional for vocational plan development, the Department must also inform the employer, in writing, of the employer's right to make a valid return-to-work offer. A valid offer must be for gainful employment in a permanent position with the employer of injury and must be consistent with any documented physical restrictions of the worker.

If an employer fails to make a valid return-to-work offer within 15 calendar days, the worker may decline the offer and choose to remain in vocational plan development.

A vocational plan must be completed and submitted to the Department for approval within 90 days of beginning vocational plan development. The Department is authorized to adopt rules to create exceptions and extensions of this time frame.

Vocational plans must contain an accountability agreement signed by the worker. The agreement must detail expectations related to progress and other factors that influence successful participation in the plan. Failure to abide by these expectations may result in suspension of vocational benefits.

Formal education included as part of the vocational plan must be for an accredited or licensed program.

#### Worker Options After Approval

After the Department approves a vocational plan, a worker has 15 days to choose one of two options.

Option one is to participate in the vocational plan implemented by the Department. Option two is to decline to participate in the vocational plan. However, the Department may order vocational services for the worker without regard to the worker's option selection if vocational assistance is necessary and likely to prevent permanent and total disability.

If the worker chooses option two and declines to participate, the worker is entitled to six months of time-loss, paid in bi-weekly payments. Payments do not include interest on the unpaid balance and the Department has the discretion to provide the entire amount in a lump sum payment. In addition, if the worker chooses option two and declines to participate, the amount of tuition benefits or educational costs described in the vocational plan remain available to the worker for five years. The worker must apply to the Department or self-insurer to receive the tuition benefits or educational costs and may use them at an accredited institution for tuition, books, fees, and tools. The amount available for tuition must increase based on the average percentage change in tuition for the next fall quarter at all Washington state community colleges.

If the worker chooses option two and declines to participate, the Department must close the claim on the date the worker chooses not to participate.

#### Vocational Costs and Time Frames

Allowable costs for vocational rehabilitation services are set at \$12,000, but must be adjusted annually on July 1 of each year. The annual adjustment applies to plans approved on or after the July 1 of the adjustment until the following June 30. The adjustment must be made based on the average percentage change in tuition for the next fall quarter for all Washington community colleges.

A vocational plan must not exceed two years. As under current law, if a worker is required to reside away from his or her customary residence while undergoing vocational rehabilitation, the reasonable costs of board and lodging must also be paid and a worker undergoing vocational rehabilitation is entitled to continuing time-loss compensation while actively and successfully undergoing vocational rehabilitation.

#### Vocational Plan Interruption

Vocational plan interruption is defined as an occurrence that disrupts a vocational plan to the extent that the employability goal is no longer attainable within the cost and time limits detailed in the vocational plan. Institutionally scheduled breaks in educational programs or occasional absence due to illness are not vocational plan interruptions.

When vocational plan interruption is beyond the control of the worker, the worker may recommence the vocational plan and the Department or self-insurer must credit any time and money expended that is necessary to complete the plan. An interruption is beyond the control of the worker when it is due to closure of an accredited institution, the death of the worker's father, mother, spouse, sibling, or child, or documented changes in the worker's objective medical condition that prevent further participation in the vocational plan.

When vocational plan interruption is the result of the worker's actions, entitlement to time-loss is suspended. If the vocational plan is recommenced, or a new plan is developed, time and money expended prior to interruption is not credited. Interruption is the result of the worker's actions when the worker fails to meet attendance expectations set by the training or educational institution or fails to achieve passing grades or acceptable performance reviews.

The Department may adopt rules to provide appropriate exceptions and to define and provide examples of vocational plan interruptions.

#### Future Vocational Assistance

A worker who chooses option one (participates in a vocational plan) or option two (declines to participate and receives other benefits) may be entitled to future vocational assistance if the claim is re-opened based on an aggravation or if the worker files a new claim.

If the worker chose option one (participates in a vocational plan) and successfully completed the vocational plan, the total amount available for vocational services under a subsequent claim or following the reopening of the claim, is subject to the \$12,000 cost cap and the two-year time limit.

If the worker chose option two and declined to participate in a vocational plan, the worker is entitled to vocational assistance in a subsequent claim or re-opening that occurs five years following the date the worker chose not to participate and the claim was closed. Future vocational assistance is limited to 18 months and \$12,000 minus the amount expended by the Department or self-insurer for training at an accredited institution pursuant to the option two choice. Any tuition benefits not yet expended are only available for the implementation of a vocational retraining plan. The choice not to participate in a vocational plan is not available to the worker under the subsequent claim or reopening of the claim. The Department may allow additional training time and tuition money, without regard to the worker's prior choice not to participate in a vocational plan, but not to exceed the total caps, if additional time or tuition money would make the worker employable.

#### Temporary Vocational Cost Fund

To facilitate study and evaluation of the results of the pilot program, the Department must establish a temporary vocational cost fund to minimize any unintended financial impacts to Washington employers who pay premiums and other assessments into the workers' compensation state fund. The Department must transfer \$20 million from the Medical Aid Fund to the temporary vocational cost fund on July 1, 2008. Additional funds may be transferred from the

Medical Aid Fund as deemed necessary by the Department. The Department may abolish the temporary vocational cost fund five years after the end of the pilot program, on recommendation from a Department actuary.

Generally, vocational costs are chargeable to the employer's cost experience or must be paid by a self-insured employer. However, vocational costs, including time-loss, may be paid from the temporary vocational cost fund at the discretion of the Department if:

- the worker previously participated in a vocational plan under the pilot program or chose option two and declined to participate; and
- the date of injury or disease manifestation is within the period of time used to calculate the state fund employer's experience factor.

When paid from the temporary vocational cost fund, vocational costs are not charged to an employer's cost experience. A self-insured employer may request the Department to reimburse the employer from the temporary vocational cost fund.

#### Register

The Department must develop and maintain a register of workers who have been retrained or have chosen one of the vocational options during the pilot program. The register must be kept for at least the duration of the pilot program.

#### Study and Review

An independent review and study of the effects of the pilot program must be conducted to determine whether the pilot program has achieves appropriate outcomes at reasonable cost to the system. The Department is authorized to adopt rules to further define the scope and elements of the study.

**Rules Authority:** The Department of Labor and Industries is authorized to adopt rules necessary to implement the act.

**Appropriation:** None.

**Fiscal Note:** Requested on February 8, 2007.

**Effective Date:** The bill takes effect on January 1, 2008.