
Commerce & Labor Committee

SSB 5053

Brief Description: Creating the office of the ombudsman for workers of industrial insurance self-insured employers.

Sponsors: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Keiser, Kohl-Welles and Kline).

Brief Summary of Substitute Bill

- Creates the office of the ombudsman for workers of industrial insurance self-insured employers.

Hearing Date: 3/22/07

Staff: Sarah Beznoska (786-7109).

Background:

Industrial insurance is a no-fault state workers' compensation program that provides medical and partial wage replacement benefits to covered workers who are injured on the job or who develop an occupational disease. Employers must insure with the state fund operated by the Department of Labor and Industries (Department) or, if qualified, may self-insure.

To self-insure, the employer must establish, to the Department's satisfaction, that the employer has sufficient financial ability to make certain the prompt payment of all compensation and all assessments. Under Department rule, an employer must meet the following criteria to self-insure:

- be in business for three years;
- have a written accident prevention program in place for at least six months prior to making application to become self-insured;
- have total assets worth at least \$25 million as verified by audited financial statements prepared by independent certified accountants;
- demonstrate positive earnings in the current year and two out of the last three years; and

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- have a current liquidity ratio of at least 1.3 to 1, and a debt to net worth ratio of not greater than 4 to 1.

Self-insurers must provide their injured workers with the same benefits that are provided to injured workers in state fund claims, including medical and partial wage replacement benefits, permanent partial and total disability benefits, and death benefits. Self-insurers manage some aspects of their injured worker claims including:

- paying time-loss benefits directly to their injured workers and reporting these payments to the Department;
- scheduling medical appointments required by the employer, referring injured workers to vocational rehabilitation counselors, and closing certain undisputed claims; and
- determining and paying permanent partial disability benefits if the claimant has returned to work with the employer. In other claims, the Department determines permanent disability benefits and closes the claim.

For other aspects of self-insured claims, the Department must make determinations and issue orders, such as orders allowing or denying a claim. The Department also pays pension benefits to self-insured injured workers, and the self-insurer pays the pension reserve for these costs. The Director of the Department (Director) has authority to intervene on his or her own initiative in disputes and enter orders to promptly determine the matter and protect the rights of all parties.

Self-insurers pay certain assessments to the Department to cover the Department's administrative costs of regulating self-insurance and for an insolvency trust fund that covers the costs of self-insured employers who become unable to meet their workers' compensation obligations.

Self-insurers are subject to decertification or corrective action for failing to meet financial requirements or for various prohibited actions against employees. If a self-insurer unreasonably delays or refuses to pay benefits when due, the Director may order the self-insurer to pay an additional penalty of \$500 or 25 percent of the amount due, which is paid to the worker with the benefits that were due.

Summary of Bill:

The office of the ombudsman for workers of industrial insurance self-insured employers is created. The ombudsman may not be physically housed within the industrial insurance division of the Department of Labor and Industries (Department). During the first two years after creation, the staffing level for the office of the ombudsman must not be more than four persons, including the ombudsman and any administrative staff. After the first two years, the staffing levels must be determined based on workload and whether additional locations are needed.

The ombudsman is appointed by the Governor for a term of six years and reports to the Director of the Department. Any ombudsman must have training or experience, or both, in the following:

- industrial insurance including self-insurance programs;
- the legal system;
- dispute or problem resolution techniques, including investigation, mediation, or negotiation.

The ombudsman program must:

- act as an advocate for injured workers of self-insured employers;
- provide industrial insurance information to workers of self-insured employers;
- identify, investigate, and facilitate resolution of industrial insurance complaints;
- maintain a statewide toll free telephone number to receive complaints and inquiries; and
- refer complaints to the Department.

The office of the ombudsman must develop referral procedures for complaints by workers of self-insured employers. The Department is required to act as quickly as possible on any complaint referred to the Department and to forward the ombudsman a summary of the results of the investigation and action proposed or taken.

The ombudsman must integrate into existing posters and brochures information explaining the ombudsman program. The posters and brochures must contain the ombudsman's toll-free telephone number. Self-insured employers are required to place a poster in an area where all employees have access to it. Self-insured employers also must provide a brochure to all injured employees at the time the employer is notified of an injury.

The ombudsman is not liable for the good faith performance of his or her responsibilities, and employees who provide information to or communicate with the ombudsman may not be subject to discriminatory, disciplinary, or retaliatory action by their employers. The ombudsman's records and files relating to any complaint or investigation made and the identities of complainants, witnesses, or injured workers are confidential unless disclosure is authorized by the complainant, the injured worker, or the injured worker's guardian or legal representative.

Start-up funding is provided by a one-time assessment on all self-insurers as determined by the Department to meet the start-up costs. An annual administrative assessment on self-insured employers is established to provide ongoing funding. The amount of the annual assessment will be determined by the Director of the Department and must be proportionately based on the number of claims for each self-insured employer during the past year.

The ombudsman must report by October 1 of each year to the Governor on the following:

- the issues addressed by the ombudsman during the past year;
- an accounting of the ombudsman's monitoring activities; and
- deficiencies in the industrial insurance system related to self-insurers.

The first report is due on or before October 1, 2008.

Rules Authority: The bill does not address the rule-making authority of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.