

# HOUSE BILL REPORT

## SSB 5676

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**As Passed House:**

April 10, 2007

**Title:** An act relating to temporary total disability.

**Brief Description:** Revising provision for receipt of temporary total disability.

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

**Brief History:**

**Committee Activity:**

Commerce & Labor: 3/22/07, 3/27/07 [DP].

**Floor Activity:**

Passed House: 4/10/07, 69-29.

**Brief Summary of Substitute Bill**

- Provides that the prior closure of a claim or the receipt of permanent partial disability benefits does not affect the rate at which loss of earning power benefits are calculated upon re-opening of a claim.
- Provides that holiday pay, vacation pay, sick leave, or other similar benefits are not payments by the employer for the purposes of the employer continuing to pay the worker wages during a period of temporary total disability.

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**HOUSE COMMITTEE ON COMMERCE & LABOR**

**Majority Report:** Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

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

**Background:**

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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.*

### Loss of Earning Power

The Industrial Insurance Act allows an employer to provide a light or modified job to an injured worker while the worker is recovering from his or her injury. The light duty job must be approved by the worker's physician. If the worker returns to a job paying less than 95 percent of the worker's earning power, the worker is entitled to partial benefits paid in proportion to the worker's loss of earning power.

The loss of earning power calculation is different in situations when a claim has been closed and then reopened. If a claim is reopened, the worker is not entitled to loss of earning power benefits in the reopening unless the worker shows that he or she has suffered a decrease in earning power proximately resulting from the injury's aggravation. If the worker is entitled to loss of earning power in a reopening, loss of earning power benefits are determined by comparing the worker's current earning power to the worker's earning power at the time the claim was last closed.

### Kept-on-Salary

If a worker suffers a temporary total disability, an employer may choose to continue paying the worker wages that he or she was earning at the time of injury. In these situations, the worker is not entitled to temporary total disability benefits (time-loss benefits) during the period in which the employer continues to pay wages.

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### **Summary of Bill:**

The prior closure of the claim or the receipt of permanent partial disability benefits does not affect the rate at which loss of earning power benefits are calculated upon re-opening of a claim.

If an employer continues to pay a worker, during a period of temporary total disability, wages that the worker was earning at the time of injury, holiday pay, vacation pay, sick leave, or other similar benefits are not considered payments by the employer.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) When an employer takes an injured worker back into the workplace, it helps the employer. Employers can keep workers on salary in lieu of time-loss. A fairness issue arises when the worker is then required to use all of his or her sick leave because the worker does

not remain whole. If an employer gets the advantage of a premium reduction by keeping a worker on salary, then the worker should be kept on salary using full wages and benefits. It is unfair to require a worker to use all sick leave hours for a workplace injury. Losing all of one's sick leave makes things difficult and leaves a worker with no sick leave hours to cover instances where sick leave is necessary.

The loss of earning power piece of this bill is related to a problem that has been confused by a court decision called *Hubbard*. Permanent partial disability payments are meant to address actual loss of use of a body part and are not meant to compensate workers for wage loss benefits or lost earning capacity. If a permanent partial disability award is made and a claim is later re-opened, the prior receipt of a permanent partial disability award should have no effect on the worker's ability to receive loss of earning power benefits in the re-opened claim.

(Opposed) This is really two bills in one bill. The kept-on-salary piece relates to fringe benefit payments that the employer makes and it is very rare to regulate in statute an employer's payment of voluntary benefits. There are only a few examples where statutes dictate what an employer can and cannot do with voluntarily given benefits. In addition, kept-on-salary is an administrative policy and not a rule. Undoing an administrative policy with a statute is not appropriate.

In the *Hubbard* decision about loss of earning power, the court cited a list of cases related to permanent partial disability being consideration of lost earning power. In addition, it makes sense that loss of earning power in a re-opening should be calculated based on earning power at the time of the re-opening.

**Persons Testifying:** (In support) Jeff Johnson, Washington State Labor Council; and David Lauman, Washington State Trial Lawyers Association.

(Opposed) Kris Tefft, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.