

SENATE BILL REPORT

SSB 5676

As Passed Senate, March 10, 2007

Title: An act relating to temporary total disability.

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

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

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/26/07, 2/27/07 [DPS, DNP].

Passed Senate: 3/10/07, 31-15.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5676 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senators Clements, Ranking Minority Member, Hewitt and Holmquist.

Staff: Kathleen Buchli (786-7488)

Background: 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.

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.

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.

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 reopening the 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Historically, calculations for loss of earning power have gone back to the time of injury and not when the claim has been reopened. Loss of earning power is being calculated at the time of the claim reopening because of conflicting case law. The bill would clarify what has been existing practice. Under the kept on salary policy, workers are being forced to take sick leave rather than file for temporary total disability.

CON: A recent court case has stated that when reopening a claim, the worker must show new loss of earning potential. The kept on salary policy is an administrative policy and adjustments to that policy should be done in rules and not in statute which could open the policy to litigation.

Persons Testifying: PRO: Wayne Lieb, Washington State Trial Lawyers Association; Robby Stern, Washington State Labor Council.

CON: Sean O'Sullivan, Association of Western Pulp and Paper Workers; Kris Tefft, Association of Washington Business.