
HOUSE BILL 3172

State of Washington 60th Legislature 2008 Regular Session

By Representatives Condotta and Chandler

Read first time 01/23/08. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to worker's compensation reform; amending RCW
2 51.08.100, 51.08.160, 51.32.020, 51.32.060, 51.32.075, 51.32.100,
3 51.32.160, and 51.52.120; reenacting and amending RCW 51.32.090; adding
4 a new section to chapter 51.32 RCW; adding a new section to chapter
5 51.36 RCW; prescribing penalties; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 51.08.100 and 1961 c 23 s 51.08.100 are each amended
8 to read as follows:

9 "Injury" means a sudden and tangible happening(~~()~~) of a traumatic
10 nature(~~(, producing)~~) that produces an immediate or prompt result(~~(~~
11 ~~and occurring from without, and such physical conditions as result~~
12 ~~therefrom)~~). For a worker to receive benefits for an injury under this
13 title, there must be a specific medical diagnosis directly related to
14 the injury that must contribute by a factor of at least fifty percent
15 to the worker's inability to work.

16 **Sec. 2.** RCW 51.08.160 and 1977 ex.s. c 350 s 13 are each amended
17 to read as follows:

18 "Permanent total disability" means the loss of both legs(~~()~~) or

1 arms, or one leg and one arm, total loss of eyesight, or paralysis (~~or~~
2 ~~other condition~~) resulting from a work-related injury or occupational
3 disease and permanently incapacitating the worker from performing (~~any~~
4 ~~work at any gainful occupation~~) sedentary work or any other work
5 within a fifty mile radius of the worker's residence.

6 **Sec. 3.** RCW 51.32.020 and 1995 c 160 s 2 are each amended to read
7 as follows:

8 (1)(a) If injury or death results to a worker from the deliberate
9 intention of the worker himself or herself to produce such injury or
10 death, or while the worker is engaged in the attempt to commit, or the
11 commission of, a felony, neither the worker nor the widow, widower,
12 child, or dependent of the worker shall receive any payment under this
13 title.

14 (b) If injury or death results to a worker from the deliberate
15 intention of a beneficiary of that worker to produce the injury or
16 death, or if injury or death results to a worker as a consequence of a
17 beneficiary of that worker engaging in the attempt to commit, or the
18 commission of, a felony, the beneficiary shall not receive any payment
19 under this title.

20 (2) An invalid child, while being supported and cared for in a
21 state institution, shall not receive compensation under this chapter.

22 (3) No payment shall be made to or for a natural child of a
23 deceased worker and, at the same time, as the stepchild of a deceased
24 worker.

25 (4) Except for proper and necessary medical and surgical care
26 directly related to an injury or occupational disease, no payment shall
27 be made under this title to a worker, his or her spouse, or his or her
28 dependents if the worker used false or fraudulently obtained documents
29 to misrepresent his or her identity to obtain employment or his or her
30 ability to legally work in the United States.

31 (5) No payment shall be made under this title to a worker, his or
32 her spouse, or his or her dependents if the injury or occupational
33 disease sustained while in the course of employment resulted from a
34 preexisting medical condition such as, but not limited to, epilepsy or
35 diabetes that cause a seizure.

36 (6) No payment shall be made under this title to a worker, his or

1 her spouse, or his or her dependents if the worker was under the
2 influence of a controlled substance for which the worker did not have
3 a valid prescription at the time of the injury or occupational disease.

4 (7)(a) Except as provided in (b) of this subsection, no payment
5 shall be made under this title to a worker, his or her spouse, or his
6 or her dependents if:

7 (i) Under a prior claim, the worker was permanently restricted from
8 returning to the job held at the time of his or her injury or
9 occupational disease by his or her attending physician;

10 (ii) The worker received vocational rehabilitation services under
11 the prior claim; and

12 (iii) The worker sustained the new injury or occupational disease
13 while performing the job from which he or she was restricted.

14 (b) A worker not entitled to payment under (a) of this subsection
15 shall receive proper and necessary medical and surgical care directly
16 related to the new injury or occupational disease.

17 (8) No payment shall be made under this title to a worker, his or
18 her spouse, or his or her dependents for pain or other subjective
19 complaints alone, in the absence of objective relevant medical
20 findings.

21 **Sec. 4.** RCW 51.32.060 and 2007 c 284 s 2 are each amended to read
22 as follows:

23 (1) When the supervisor of industrial insurance (~~shall~~)
24 determines that the worker's permanent total disability results from
25 the injury, the worker shall receive monthly during the period of such
26 disability, but not to exceed one hundred four weeks, the following
27 compensation:

28 (a) If married at the time of injury, sixty-five percent of his or
29 her wages.

30 (b) If married with one child at the time of injury, sixty-seven
31 percent of his or her wages.

32 (c) If married with two children at the time of injury, sixty-nine
33 percent of his or her wages.

34 (d) If married with three children at the time of injury,
35 seventy-one percent of his or her wages.

36 (e) If married with four children at the time of injury,
37 seventy-three percent of his or her wages.

1 (f) If married with five or more children at the time of injury,
2 seventy-five percent of his or her wages.

3 (g) If unmarried at the time of the injury, sixty percent of his or
4 her wages.

5 (h) If unmarried with one child at the time of injury, sixty-two
6 percent of his or her wages.

7 (i) If unmarried with two children at the time of injury,
8 sixty-four percent of his or her wages.

9 (j) If unmarried with three children at the time of injury,
10 sixty-six percent of his or her wages.

11 (k) If unmarried with four children at the time of injury,
12 sixty-eight percent of his or her wages.

13 (l) If unmarried with five or more children at the time of injury,
14 seventy percent of his or her wages.

15 (2) For any period of time where both husband and wife are entitled
16 to compensation as temporarily or totally disabled workers, only that
17 spouse having the higher wages of the two shall be entitled to claim
18 their child or children for compensation purposes.

19 (3) In case of permanent total disability, if the character of the
20 injury is such as to render the worker so physically helpless as to
21 require the hiring of the services of an attendant, the department
22 shall make monthly payments to such attendant for such services as long
23 as such requirement continues, but such payments shall not obtain or be
24 operative while the worker is receiving care under or pursuant to the
25 provisions of chapter 51.36 RCW and RCW 51.04.105.

26 (4) Should any further accident result in the permanent total
27 disability of an injured worker, he or she shall receive the pension to
28 which he or she would be entitled, notwithstanding the payment of a
29 lump sum for his or her prior injury.

30 (5) In no event shall the monthly payments provided in this
31 section:

32 (a) Exceed the applicable percentage of the average monthly wage in
33 the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

1 those whose right to compensation was established on or after July 1,
2 1971, and before July 1983, which shall be determined by multiplying
3 the amount of compensation to which they are entitled by a fraction,
4 the denominator of which shall be the average monthly wage in the state
5 under RCW 51.08.018 for the fiscal year in which such person's right to
6 compensation was established, and the numerator of which shall be the
7 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

8 (3) In addition to the adjustments under subsections (1) and (2) of
9 this section, further adjustments shall be made beginning on July 1,
10 1984, and on each July 1st thereafter for those whose right to
11 compensation was established on or after July 1, 1971. The adjustment
12 shall be determined by multiplying the amount of compensation to which
13 they are entitled by a fraction, the denominator of which shall be the
14 average monthly wage in the state under RCW 51.08.018 for the fiscal
15 year in which such person's right to compensation was established, and
16 the numerator of which shall be the average monthly wage in the state
17 under RCW 51.08.018 on July 1st of the year in which the adjustment is
18 being made. The department or self-insurer shall adjust the resulting
19 compensation rate to the nearest whole cent, not to exceed the average
20 monthly wage in the state as computed under RCW 51.08.018.

21 (4) For any awards made under RCW 51.32.060 on or after July 1,
22 2009, the benefits shall cease when the worker reaches the age of
23 seventy-five if the worker is receiving retirement benefits from social
24 security, an employer-sponsored pension plan, or any other retirement
25 plan.

26 **Sec. 6.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
27 each reenacted and amended to read as follows:

28 (1) When the total disability is only temporary, the schedule of
29 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
30 the total disability continues, but in no event for longer than one
31 hundred four weeks.

32 (2) Any compensation payable under this section for children not in
33 the custody of the injured worker as of the date of injury shall be
34 payable only to such person as actually is providing the support for
35 such child or children pursuant to the order of a court of record
36 providing for support of such child or children.

1 (3)(a) As soon as recovery is so complete that the present earning
2 power of the worker, at any kind of work, is restored to that existing
3 at the time of the occurrence of the injury, the payments shall cease.
4 If and so long as the present earning power is only partially restored,
5 the payments shall:

6 (i) For claims for injuries that occurred before May 7, 1993,
7 continue in the proportion which the new earning power shall bear to
8 the old; or

9 (ii) For claims for injuries occurring on or after May 7, 1993,
10 equal eighty percent of the actual difference between the worker's
11 present wages and earning power at the time of injury, but: (A) The
12 total of these payments and the worker's present wages may not exceed
13 one hundred fifty percent of the average monthly wage in the state as
14 computed under RCW 51.08.018; (B) the payments may not exceed one
15 hundred percent of the entitlement as computed under subsection (1) of
16 this section; and (C) the payments may not be less than the worker
17 would have received if (a)(i) of this subsection had been applicable to
18 the worker's claim.

19 (b) No compensation shall be payable under this subsection (3)
20 unless the loss of earning power shall exceed five percent.

21 (c) No compensation shall be payable under this subsection for
22 longer than one hundred four weeks.

23 (d) The prior closure of the claim or the receipt of permanent
24 partial disability benefits shall not affect the rate at which loss of
25 earning power benefits are calculated upon reopening the claim.

26 (4)(a) Whenever the employer of injury requests that a worker who
27 is entitled to temporary total disability under this chapter be
28 certified by a physician or licensed advanced registered nurse
29 practitioner as able to perform available work other than his or her
30 usual work, the employer shall furnish to the physician or licensed
31 advanced registered nurse practitioner, with a copy to the worker, a
32 statement describing the work available with the employer of injury in
33 terms that will enable the physician or licensed advanced registered
34 nurse practitioner to relate the physical activities of the job to the
35 worker's disability. The physician or licensed advanced registered
36 nurse practitioner shall then determine whether the worker is
37 physically able to perform the work described. The worker's temporary
38 total disability payments shall continue until the worker is released

1 by his or her physician or licensed advanced registered nurse
2 practitioner for the work, and begins the work with the employer of
3 injury. If the work thereafter comes to an end before the worker's
4 recovery is sufficient in the judgment of his or her physician or
5 licensed advanced registered nurse practitioner to permit him or her to
6 return to his or her usual job, or to perform other available work
7 offered by the employer of injury, the worker's temporary total
8 disability payments shall be resumed. Should the available work
9 described, once undertaken by the worker, impede his or her recovery to
10 the extent that in the judgment of his or her physician or licensed
11 advanced registered nurse practitioner he or she should not continue to
12 work, the worker's temporary total disability payments shall be resumed
13 when the worker ceases such work.

14 (b) Once the worker returns to work under the terms of this
15 subsection (4), he or she shall not be assigned by the employer to work
16 other than the available work described without the worker's written
17 consent, or without prior review and approval by the worker's physician
18 or licensed advanced registered nurse practitioner.

19 (c) If the worker returns to work under this subsection (4), any
20 employee health and welfare benefits that the worker was receiving at
21 the time of injury shall continue or be resumed at the level provided
22 at the time of injury. Such benefits shall not be continued or resumed
23 if to do so is inconsistent with the terms of the benefit program, or
24 with the terms of the collective bargaining agreement currently in
25 force.

26 (d) In the event of any dispute as to the worker's ability to
27 perform the available work offered by the employer, the department
28 shall make the final determination.

29 (5) No worker shall receive compensation for or during the day on
30 which injury was received or the three days following the same, unless
31 his or her disability shall continue for a period of fourteen
32 consecutive calendar days from date of injury: PROVIDED, That attempts
33 to return to work in the first fourteen days following the injury shall
34 not serve to break the continuity of the period of disability if the
35 disability continues fourteen days after the injury occurs.

36 (6) Should a worker suffer a temporary total disability and should
37 his or her employer at the time of the injury continue to pay him or
38 her the wages which he or she was earning at the time of such injury,

1 such injured worker shall not receive any payment provided in
2 subsection (1) of this section during the period his or her employer
3 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
4 sick leave, or other similar benefits shall not be deemed to be
5 payments by the employer for the purposes of this subsection.

6 (7) In no event shall the monthly payments provided in this
7 section:

8 (a) Exceed the applicable percentage of the average monthly wage in
9 the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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15 (b) For dates of injury or disease manifestation after July 1,
16 2008, be less than fifteen percent of the average monthly wage in the
17 state as computed under RCW 51.08.018 plus an additional ten dollars
18 per month if the worker is married and an additional ten dollars per
19 month for each child of the worker up to a maximum of five children.
20 However, if the monthly payment computed under this subsection (7)(b)
21 is greater than one hundred percent of the wages of the worker as
22 determined under RCW 51.08.178, the monthly payment due to the worker
23 shall be equal to the greater of the monthly wages of the worker or the
24 minimum benefit set forth in this section on June 30, 2008.

25 (8) If the supervisor of industrial insurance determines that the
26 worker is voluntarily retired and is no longer attached to the
27 workforce, benefits shall not be paid under this section.

28 **Sec. 7.** RCW 51.32.100 and 1977 ex.s. c 350 s 49 are each amended
29 to read as follows:

30 If it is determined that an injured worker had, at the time of his
31 or her injury, ~~((a preexisting disease and that such disease delays or~~
32 ~~prevents complete recovery from such injury, it shall be ascertained,~~
33 ~~as nearly as possible, the period over which the injury would have~~
34 ~~caused disability were it not for the diseased condition and the extent~~
35 ~~of permanent partial disability which the injury would have caused were~~

1 ~~it not for the disease, and compensation shall be awarded only~~
2 ~~therefor))~~ a preexisting medical or health condition, only the
3 treatment directly related to the work-related injury or illness is
4 compensable under this title. Any treatment related to the preexisting
5 medical or health condition is not compensable under this title.

6 **Sec. 8.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read
7 as follows:

8 (1)(a) Except as provided in section 9 of this act, if aggravation,
9 diminution, or termination of disability takes place, the director or
10 his or her designee may, (~~upon the application of the beneficiary,~~
11 ~~made within seven years from the date the first closing order becomes~~
12 ~~final, or at any time upon his or her own motion,~~) readjust the rate
13 of compensation in accordance with the rules in this section provided
14 for the same, or in a proper case terminate the payment(~~(÷ PROVIDED,~~
15 ~~That)).~~ The director may, upon application of the worker made (~~at any~~
16 ~~time, provide proper and~~) within seven years from the date of claim
17 closure, authorize necessary medical and surgical services (~~as~~
18 ~~authorized under RCW 51.36.010)) as may be needed unless the claim was
19 closed under section 9 of this act. Under no circumstances shall a
20 worker who is requesting a claim be reopened for further medical or
21 surgical treatment be entitled to time-loss compensation from the
22 accident fund. The department shall promptly mail a copy of the
23 application to the employer at the employer's last known address as
24 shown by the records of the department.~~

25 (b) "Closing order" as used in this section means an order based on
26 factors which include medical recommendation, advice, or examination.

27 (c) Applications for benefits where the claim has been closed
28 without medical recommendation, advice, or examination are not subject
29 to the seven year limitation of this section. The preceding sentence
30 shall not apply to any closing order issued prior to July 1, 1981.
31 First closing orders issued between July 1, 1981, and July 1, 1985,
32 shall, for the purposes of this section only, be deemed issued on July
33 1, 1985. The time limitation of this section shall be ten years in
34 claims involving loss of vision or function of the eyes.

35 (d) If an order denying an application to reopen filed on or after
36 July 1, 1988, is not issued within ninety days of receipt of such
37 application by the self-insured employer or the department, such

1 application shall be deemed granted. However, for good cause, the
2 department may extend the time for making the final determination on
3 the application for an additional sixty days.

4 (2) If a worker receiving a pension for total disability returns to
5 gainful employment for wages, the director may suspend or terminate the
6 rate of compensation established for the disability without producing
7 medical evidence that shows that a diminution of the disability has
8 occurred.

9 (3) No act done or ordered to be done by the director, or the
10 department prior to the signing and filing in the matter of a written
11 order for such readjustment shall be grounds for such readjustment.

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

14 The department or a self-insurer may offer the worker, or the
15 worker's beneficiary if the worker is deceased, a lump sum settlement
16 to close a claim that has been allowed. A settlement offer accepted by
17 the worker or his or her beneficiary shall discharge the employer of
18 record from any further obligation concerning the claim and release the
19 state and self-insurer from further benefit obligations. A claim that
20 has been closed under this section shall not be reopened for additional
21 compensation under this title.

22 NEW SECTION. **Sec. 10.** A new section is added to chapter 51.36 RCW
23 to read as follows:

24 When a worker has submitted to a medical examination at the request
25 of the director or the self-insurer to resolve a medical issue, the
26 director or self-insurer shall give the findings of such examination
27 greater weight than the findings of the worker's attending physician.

28 **Sec. 11.** RCW 51.52.120 and 2007 c 490 s 3 are each amended to read
29 as follows:

30 (1) It shall be unlawful for an attorney engaged in the
31 representation of any worker or beneficiary to charge ~~((for services in~~
32 ~~the department any fee in excess of a reasonable fee, of not more than~~
33 ~~thirty percent of the increase in the award secured by the attorney's~~
34 ~~services. Such reasonable fee shall be fixed by the director or the~~
35 ~~director's designee for services performed by an attorney for such~~

1 ~~worker or beneficiary, if written application therefor is made by the~~
2 ~~attorney, worker, or beneficiary within one year from the date the~~
3 ~~final decision and order of the department is communicated to the party~~
4 ~~making the application)) an amount in excess of twenty percent for the
5 first five thousand dollars of benefits awarded, fifteen percent for
6 the next five thousand dollars of benefits awarded, and ten percent for
7 the balance of any benefits awarded. For purposes of this subsection,
8 "benefits awarded" means the increase in the award secured by the
9 attorney's services.~~

10 (2) If, on appeal to the board, the order, decision, or award of
11 the department is reversed or modified and additional relief is granted
12 to a worker or beneficiary, or in cases where a party other than the
13 worker or beneficiary is the appealing party and the worker's or
14 beneficiary's right to relief is sustained by the board, the board
15 shall fix a reasonable fee for the services of his or her attorney in
16 proceedings before the board if written application therefor is made by
17 the attorney, worker, or beneficiary within one year from the date the
18 final decision and order of the board is communicated to the party
19 making the application. In fixing the amount of such attorney's fee,
20 the board shall take into consideration the fee allowed, if any, by the
21 director, for services before the department, and the board may review
22 the fee fixed by the director. Any attorney's fee set by the
23 department or the board may be reviewed by the superior court upon
24 application of such attorney, worker, or beneficiary. The department
25 or self-insured employer, as the case may be, shall be served a copy of
26 the application and shall be entitled to appear and take part in the
27 proceedings. Where the board, pursuant to this section, fixes the
28 attorney's fee, it shall be unlawful for an attorney to charge or
29 receive any fee for services before the board in excess of that fee
30 fixed by the board.

31 (3) In an appeal to the board involving the presumption established
32 under RCW 51.32.185, the attorney's fee shall be payable as set forth
33 under (~~RCW 51.32.185~~) subsection (1) of this section.

34 (4) Any person who violates this section is guilty of a misdemeanor
35 and shall be subject to a civil penalty of up to ten thousand dollars.

36 NEW SECTION. Sec. 12. If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2008.

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