
SENATE BILL 5443

State of Washington

60th Legislature

2007 Regular Session

By Senators Kohl-Welles and Keiser; by request of Department of Labor & Industries

Read first time 01/19/2007. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to the suppression of workers' compensation claims;
2 amending RCW 51.28.010, 51.28.025, and 51.28.050; and prescribing
3 penalties.

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

5 **Sec. 1.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
6 as follows:

7 (1) Whenever any accident occurs to any worker it shall be the duty
8 of such worker or someone in his or her behalf to forthwith report such
9 accident to his or her employer, superintendent, or supervisor in
10 charge of the work, and of the employer to at once report such accident
11 and the injury resulting therefrom to the department pursuant to RCW
12 51.28.025 where the worker has received treatment from a physician, has
13 been hospitalized, disabled from work, or has died as the apparent
14 result of such accident and injury.

15 (2) Upon receipt of such notice of accident, the department shall
16 immediately forward to the worker or his or her beneficiaries or
17 dependents notification, in nontechnical language, of their rights
18 under this title. The notice must specify the worker's right to

1 receive health services from a physician of the worker's choice under
2 RCW 51.36.010, including chiropractic services under RCW 51.36.015, and
3 must list the types of providers authorized to provide these services.

4 (3) Employers shall not engage in the suppression of industrial
5 insurance claims for their employees.

6 (4) For the purposes of this section, claim suppression is defined
7 as expressly or repeatedly inducing employees to fail to report
8 injuries, inducing employees to treat injuries in the course of
9 employment as off-the-job injuries, or otherwise acting to suppress
10 legitimate industrial insurance claims.

11 (5) In determining whether an employer has engaged in claim
12 suppression, the department shall consider the employer's history of
13 compliance with industrial insurance reporting requirements, and
14 whether there are employment-related incentives to discourage employees
15 from reporting injuries or filing claims. The department will have the
16 burden of proving claims suppression by a preponderance of the
17 evidence.

18 (6) Claim suppression does not include an employer's provision at
19 the worksite of first aid as defined by the department. The department
20 shall adopt rules defining first aid.

21 **Sec. 2.** RCW 51.28.025 and 1987 c 185 s 32 are each amended to read
22 as follows:

23 (1) Whenever an employer has notice or knowledge of an injury or
24 occupational disease sustained by any worker in his or her employment
25 who has received treatment from a physician, has been hospitalized,
26 disabled from work or has died as the apparent result of such injury or
27 occupational disease, the employer shall immediately report the same to
28 the department on forms prescribed by it. The report shall include:

29 (a) The name, address, and business of the employer;

30 (b) The name, address, and occupation of the worker;

31 (c) The date, time, cause, and nature of the injury or occupational
32 disease;

33 (d) Whether the injury or occupational disease arose in the course
34 of the injured worker's employment;

35 (e) All available information pertaining to the nature of the
36 injury or occupational disease including but not limited to any visible

1 signs, any complaints of the worker, any time lost from work, and the
2 observable effect on the worker's bodily functions, so far as is known;
3 and

4 (f) Such other pertinent information as the department may
5 prescribe by regulation.

6 ~~(2) ((Failure or refusal to file the report required by subsection~~
7 ~~(1) shall subject the offending employer to a penalty determined by the~~
8 ~~director but not to exceed two hundred fifty dollars for each offense,~~
9 ~~to be collected in a civil action in the name of the department and~~
10 ~~paid into the supplemental pension fund.))~~ The employer shall not
11 engage in the suppression of industrial insurance claims as defined in
12 RCW 51.28.010(4). An employer found to have engaged in such activity
13 shall be subject to a penalty of at least two hundred fifty dollars,
14 not to exceed two thousand five hundred dollars, for each offense. The
15 penalty shall be payable to the supplemental pension fund. The
16 department shall adopt rules establishing the amount of penalties,
17 taking into account the size of the employer and whether there are
18 prior findings of claim suppression. When a determination of claim
19 suppression has been made, the employer shall be prohibited from any
20 current or future participation in a retrospective rating program. If
21 self-insured, the director shall withdraw certification as provided in
22 RCW 51.14.080.

23 (3) When a determination of claim suppression is made and the
24 penalty is assessed, the department shall serve the employer and any
25 affected retrospective rating group with a determination as provided in
26 RCW 51.52.050. Once the order is final, the amount due shall be
27 collected in accordance with the provisions of RCW 51.48.140 and
28 51.48.150.

29 (4) The director, or the director's designee, shall investigate
30 reports or complaints that an employer has acted to suppress claims as
31 prohibited in RCW 51.28.010(3). The complaints or allegations must be
32 received in writing, and must include the name or names of the
33 individuals or organizations submitting the complaint. The director
34 may subpoena records from the employer, medical providers, and any
35 other entity that the director believes may have relevant information.
36 The director's investigative and subpoena authority in this subsection
37 is limited solely to investigations into allegations of claims
38 suppression.

1 (5) If the director determines that an employer has engaged in acts
2 of claim suppression as described in RCW 51.28.010(4) and, as a result,
3 the worker has not filed a claim for industrial insurance benefits as
4 prescribed by law, then the director in his or her sole discretion may
5 waive the time limits for filing a claim provided in RCW 51.28.050, if
6 the complaint or allegation of claim suppression is received within two
7 years of the worker's accident or exposure.

8 **Sec. 3.** RCW 51.28.050 and 1984 c 159 s 1 are each amended to read
9 as follows:

10 No application shall be valid or claim thereunder enforceable
11 unless filed within one year after the day upon which the injury
12 occurred or the rights of dependents or beneficiaries accrued, except
13 as provided in RCW 51.28.055 and 51.28.025(5).

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