
SENATE BILL 5462

State of Washington

61st Legislature

2009 Regular Session

By Senators Holmquist, Hewitt, King, Schoesler, Delvin, Stevens, Parlette, and Honeyford

Read first time 01/22/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to simplifying and adding certainty to the
2 calculation of workers' compensation benefits; amending RCW 51.08.178,
3 51.32.050, 51.32.060, and 51.32.240; reenacting and amending RCW
4 51.32.090; adding new sections to chapter 51.08 RCW; providing an
5 effective date; and declaring an emergency.

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

7 **Sec. 1.** RCW 51.08.178 and 2007 c 297 s 1 are each amended to read
8 as follows:

9 ~~(1) ((For the purposes of this title, the monthly wages the worker~~
10 ~~was receiving from all employment at the time of injury shall be the~~
11 ~~basis upon which compensation is computed unless otherwise provided~~
12 ~~specifically in the statute concerned. In cases where the worker's~~
13 ~~wages are not fixed by the month, they shall be determined by~~
14 ~~multiplying the daily wage the worker was receiving at the time of the~~
15 ~~injury;~~

16 ~~(a) By five, if the worker was normally employed one day a week;~~
17 ~~(b) By nine, if the worker was normally employed two days a week;~~
18 ~~(c) By thirteen, if the worker was normally employed three days a~~
19 ~~week;~~

1 ~~(d) By eighteen, if the worker was normally employed four days a~~
2 ~~week;~~

3 ~~(e) By twenty two, if the worker was normally employed five days a~~
4 ~~week;~~

5 ~~(f) By twenty six, if the worker was normally employed six days a~~
6 ~~week;~~

7 ~~(g) By thirty, if the worker was normally employed seven days a~~
8 ~~week.~~

9 ~~The term "wages" shall include the reasonable value of board,~~
10 ~~housing, fuel, or other consideration of like nature received from the~~
11 ~~employer as part of the contract of hire, but shall not include~~
12 ~~overtime pay except in cases under subsection (2) of this section. As~~
13 ~~consideration of like nature to board, housing, and fuel, wages shall~~
14 ~~also include the employer's payment or contributions, or appropriate~~
15 ~~portions thereof, for health care benefits unless the employer~~
16 ~~continues ongoing and current payment or contributions for these~~
17 ~~benefits at the same level as provided at the time of injury. However,~~
18 ~~tips shall also be considered wages only to the extent such tips are~~
19 ~~reported to the employer for federal income tax purposes. The daily~~
20 ~~wage shall be the hourly wage multiplied by the number of hours the~~
21 ~~worker is normally employed. The number of hours the worker is~~
22 ~~normally employed shall be determined by the department in a fair and~~
23 ~~reasonable manner, which may include averaging the number of hours~~
24 ~~worked per day.~~

25 ~~(2) In cases where (a) the worker's employment is exclusively~~
26 ~~seasonal in nature or (b) the worker's current employment or his or her~~
27 ~~relation to his or her employment is essentially part time or~~
28 ~~intermittent, the monthly wage shall be determined by dividing by~~
29 ~~twelve the total wages earned, including overtime, from all employment~~
30 ~~in any twelve successive calendar months preceding the injury which~~
31 ~~fairly represent the claimant's employment pattern.~~

32 ~~(3) If, within the twelve months immediately preceding the injury,~~
33 ~~the worker has received from the employer at the time of injury a bonus~~
34 ~~as part of the contract of hire, the average monthly value of such~~
35 ~~bonus shall be included in determining the worker's monthly wages.~~

36 ~~(4) In cases where a wage has not been fixed or cannot be~~
37 ~~reasonably and fairly determined, the monthly wage shall be computed on~~
38 ~~the basis of the usual wage paid other employees engaged in like or~~

1 ~~similar occupations where the wages are fixed.)~~ "Wages" means the
2 gross remuneration paid in cash by the employer to the worker for
3 services performed with respect to a pay period, before any deductions.
4 "Paid in cash" means payment in cash, by check, by electronic transfer,
5 or by other means made directly to the worker.

6 (a) Tips shall be considered wages only to the extent that such
7 tips are reported to the employer for federal income tax purposes.

8 (b) Wages include the actual value of board, housing, and fuel
9 received from the employer as part of the contract of hire. This
10 subsection (1)(b) does not apply during any period in which the
11 employer continues to provide, through a past or current payment,
12 board, housing, and/or fuel, that were provided to the employee at the
13 time of the injury or manifestation of occupational disease.

14 (c) Wages also include the cash value of mental and physical health
15 insurance received from the employer as part of the contract of hire.
16 This subsection (1)(c) does not apply during any period in which the
17 employer continues to provide, through a past or current payment,
18 mental and physical health insurance that was provided to the employee
19 at the time of the injury or manifestation of occupational disease.

20 (d) Wages do not include fringe benefits. Fringe benefits are any
21 consideration given to a worker in addition to wages, including, but
22 not limited to: Retirement and financial benefit plans of whatever
23 nature; life, disability, and wage-replacement insurance of whatever
24 nature; unused, accrued leave of whatever nature; memberships of
25 whatever nature; employee discounts or use or consumption of employer
26 services, materials, equipment, and facilities of whatever nature;
27 training and education of whatever nature; and other employee or
28 beneficiary benefit plan for the employee's or beneficiaries' benefit
29 resulting from the employment relationship.

30 (2)(a) During the initial payment period, the worker's monthly wage
31 shall be the total monthly wages earned from all employment, including
32 cash bonuses and overtime pay, in the thirty days immediately preceding
33 the pay period in which the date of injury or manifestation of
34 occupational disease occurred. "Initial payment period" means the
35 period starting on the date the claim for injury or manifestation of
36 occupational disease was filed and ending on the last day of the
37 twelfth consecutive calendar week following the date the claim was
38 filed.

1 (b) The worker's monthly wage during the initial payment period
2 shall be established using itemized pay statements in the pay periods
3 covering the thirty days preceding the pay period of the date of injury
4 or manifestation of occupational disease. If itemized pay statements
5 are not available from the employer or worker covering the entire
6 thirty-day period, the department shall calculate the monthly wage
7 using any available pay statements for the thirty-day period. If no
8 pay statements for the thirty-day period can be produced by either the
9 employer or the worker, the monthly wage shall be established based on
10 the contract of hire as determined in a statement from the employer and
11 worker.

12 (c) After the initial payment period, the worker's monthly wage
13 shall be determined by dividing by twelve the total wages earned from
14 all employment, including cash bonuses and overtime pay, in the twelve
15 consecutive calendar months immediately preceding the month in which
16 the injury or manifestation of occupational disease occurred.

17 (d) In cases where the worker is self-employed or the worker's
18 monthly wage cannot be reasonably determined under (b) of this
19 subsection due to the worker sustaining an injury or occupational
20 disease less than thirty days after beginning an employment
21 relationship that both the worker and the employer intend to be
22 continuous and lasting without limit into the foreseeable future, and
23 which provides wages, on an annualized basis, of greater than one
24 hundred fifty percent of wages earned by the worker in the twelve
25 months before beginning such employment, the monthly wage shall be
26 computed on the basis of the usual wage paid other employees of the
27 employer at the time of injury or manifestation of occupational disease
28 who perform like job duties with like work patterns or, if none exist,
29 other employees in the worker's labor market who perform like job
30 duties with like work patterns.

31 NEW SECTION. Sec. 2. A new section is added to chapter 51.08 RCW
32 to read as follows:

33 (1) During the initial payment period, the worker's employer shall,
34 to the extent possible, continue to provide the following if they were
35 provided by the worker's employer as part of the contract of hire and
36 were received by the worker at the time of the injury: (a) Board,
37 housing, and fuel; and (b) mental and physical health insurance.

1 (2) If the employer cannot continue to provide one or more of the
2 benefits described in subsection (1) of this section during the initial
3 payment period, the employer shall notify the department and the
4 department will adjust the worker's monthly wage calculation using the
5 cash value of the benefit the employer is unable to provide.

6 **Sec. 3.** RCW 51.32.050 and 2007 c 284 s 1 are each amended to read
7 as follows:

8 (1) Where death results from the injury the expenses of burial not
9 to exceed two hundred percent of the average monthly wage in the state
10 as defined in RCW 51.08.018 shall be paid.

11 (2)(a)(i) For claims with date of injury or manifestation of
12 occupational disease before July 1, 2009, where death results from the
13 injury, a surviving spouse of a deceased worker eligible for benefits
14 under this title shall receive monthly for life or until remarriage
15 payments according to the following schedule:

16 ~~((+i))~~ (A) If there are no children of the deceased worker, sixty
17 percent of the wages of the deceased worker;

18 ~~((+ii))~~ (B) If there is one child of the deceased worker and in
19 the legal custody of such spouse, sixty-two percent of the wages of the
20 deceased worker;

21 ~~((+iii))~~ (C) If there are two children of the deceased worker and
22 in the legal custody of such spouse, sixty-four percent of the wages of
23 the deceased worker;

24 ~~((+iv))~~ (D) If there are three children of the deceased worker and
25 in the legal custody of such spouse, sixty-six percent of the wages of
26 the deceased worker;

27 ~~((+v))~~ (E) If there are four children of the deceased worker and
28 in the legal custody of such spouse, sixty-eight percent of the wages
29 of the deceased worker; or

30 ~~((+vi))~~ (F) If there are five or more children of the deceased
31 worker and in the legal custody of such spouse, seventy percent of the
32 wages of the deceased worker.

33 (ii) For claims with date of injury or manifestation of
34 occupational disease on or after July 1, 2009, where death results from
35 the injury, a surviving spouse of a deceased worker eligible for
36 benefits under this title shall receive monthly for life or until

1 remarriage payments of sixty-six and two-thirds percent of the wages of
2 the deceased worker, but not less than two hundred seventy-six dollars.

3 (b) Where the surviving spouse does not have legal custody of any
4 child or children of the deceased worker or where after the death of
5 the worker legal custody of such child or children passes from such
6 surviving spouse to another, any payment on account of such child or
7 children not in the legal custody of the surviving spouse shall be made
8 to the person or persons having legal custody of such child or
9 children. The amount of such payments shall be five percent of the
10 monthly benefits payable as a result of the worker's death for each
11 such child but such payments shall not exceed twenty-five percent.
12 Such payments on account of such child or children shall be subtracted
13 from the amount to which such surviving spouse would have been entitled
14 had such surviving spouse had legal custody of all of the children and
15 the surviving spouse shall receive the remainder after such payments on
16 account of such child or children have been subtracted. Such payments
17 on account of a child or children not in the legal custody of such
18 surviving spouse shall be apportioned equally among such children.

19 (c) Payments to the surviving spouse of the deceased worker shall
20 cease at the end of the month in which remarriage occurs: PROVIDED,
21 That a monthly payment shall be made to the child or children of the
22 deceased worker from the month following such remarriage in a sum equal
23 to five percent of the wages of the deceased worker for one child and
24 a sum equal to five percent for each additional child up to a maximum
25 of five such children. Payments to such child or children shall be
26 apportioned equally among such children. Such sum shall be in place of
27 any payments theretofore made for the benefit of or on account of any
28 such child or children. If the surviving spouse does not have legal
29 custody of any child or children of the deceased worker, or if after
30 the death of the worker, legal custody of such child or children passes
31 from such surviving spouse to another, any payment on account of such
32 child or children not in the legal custody of the surviving spouse
33 shall be made to the person or persons having legal custody of such
34 child or children.

35 (d) In no event shall the monthly payments provided in subsection
36 (2) of this section((+

37 (+)) exceed the applicable percentage of the average monthly wage
38 in the state as computed under RCW 51.08.018 as follows:

AFTER PERCENTAGE

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

~~((ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)(d)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW 51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.))~~

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) (A) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3)

1 or fifty percent of the then remaining annuity value of his or her
2 pension, whichever is the lesser: PROVIDED, That if the injury
3 occurred prior to July 28, 1991, the remarriage benefit lump sum
4 available shall be as provided in the remarriage benefit schedules then
5 in effect; or

6 (ii) If a surviving spouse does not choose the option specified in
7 subsection (2)(f)(i) of this section to accept the lump sum payment,
8 the remarriage of the surviving spouse of a worker shall not bar him or
9 her from claiming the lump sum payment authorized in subsection
10 (2)(f)(i) of this section during the life of the remarriage, or shall
11 not prevent subsequent monthly payments to him or to her if the
12 remarriage has been terminated by death or has been dissolved or
13 annulled by valid court decree provided he or she has not previously
14 accepted the lump sum payment.

15 (g) If the surviving spouse during the remarriage should die
16 without having previously received the lump sum payment provided in
17 subsection (2)(f)(i) of this section, his or her estate shall be
18 entitled to receive the sum specified under subsection (2)(f)(i) of
19 this section or fifty percent of the then remaining annuity value of
20 his or her pension whichever is the lesser.

21 (h) The effective date of resumption of payments under subsection
22 (2)(f)(ii) of this section to a surviving spouse based upon termination
23 of a remarriage by death, annulment, or dissolution shall be the date
24 of the death or the date the judicial decree of annulment or
25 dissolution becomes final and when application for the payments has
26 been received.

27 (i) If it should be necessary to increase the reserves in the
28 reserve fund or to create a new pension reserve fund as a result of the
29 amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of
30 such increase in pension reserve in any such case shall be transferred
31 to the reserve fund from the supplemental pension fund.

32 (3) If there is a child or children and no surviving spouse of the
33 deceased worker or the surviving spouse is not eligible for benefits
34 under this title, a sum equal to thirty-five percent of the wages of
35 the deceased worker shall be paid monthly for one child and a sum
36 equivalent to fifteen percent of such wage shall be paid monthly for
37 each additional child, the total of such sum to be divided among such
38 children, share and share alike: PROVIDED, That benefits under this

1 subsection or subsection (4) of this section shall not exceed the
2 lesser of sixty-five percent of the wages of the deceased worker at the
3 time of his or her death or the applicable percentage of the average
4 monthly wage in the state as defined in RCW 51.08.018, as follows:

5	AFTER	PERCENTAGE
6	June 30, 1993	105%
7	June 30, 1994	110%
8	June 30, 1995	115%
9	June 30, 1996	120%

10 (4) In the event a surviving spouse receiving monthly payments
11 dies, the child or children of the deceased worker shall receive the
12 same payment as provided in subsection (3) of this section.

13 (5) If the worker leaves no surviving spouse or child, but leaves
14 a dependent or dependents, a monthly payment shall be made to each
15 dependent equal to fifty percent of the average monthly support
16 actually received by such dependent from the worker during the twelve
17 months next preceding the occurrence of the injury, but the total
18 payment to all dependents in any case shall not exceed the lesser of
19 sixty-five percent of the wages of the deceased worker at the time of
20 his or her death or the applicable percentage of the average monthly
21 wage in the state as defined in RCW 51.08.018 as follows:

22	AFTER	PERCENTAGE
23	June 30, 1993	105%
24	June 30, 1994	110%
25	June 30, 1995	115%
26	June 30, 1996	120%

27 If any dependent is under the age of eighteen years at the time of
28 the occurrence of the injury, the payment to such dependent shall cease
29 when such dependent reaches the age of eighteen years except such
30 payments shall continue until the dependent reaches age twenty-three
31 while permanently enrolled at a full time course in an accredited
32 school. The payment to any dependent shall cease if and when, under
33 the same circumstances, the necessity creating the dependency would
34 have ceased if the injury had not happened.

1 (6) For claims filed prior to July 1, 1986, if the injured worker
2 dies during the period of permanent total disability, whatever the
3 cause of death, leaving a surviving spouse, or child, or children, the
4 surviving spouse or child or children shall receive benefits as if
5 death resulted from the injury as provided in subsections (2) through
6 (4) of this section. Upon remarriage or death of such surviving
7 spouse, the payments to such child or children shall be made as
8 provided in subsection (2) of this section when the surviving spouse of
9 a deceased worker remarries.

10 (7) For claims filed on or after July 1, 1986, every worker who
11 becomes eligible for permanent total disability benefits shall elect an
12 option as provided in RCW 51.32.067.

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

15 (1) Except as provided in subsection (2) of this section, when the
16 supervisor of industrial insurance shall determine that permanent total
17 disability results from the injury, the worker shall receive monthly
18 during the period of such disability:

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) For any claim with date of injury or manifestation of
8 occupational disease on or after July 1, 2009, when the supervisor of
9 industrial insurance determines that permanent total disability results
10 from the injury, the worker shall receive monthly during the period of
11 such disability sixty-six and two-thirds percent of his or her wages as
12 determined under RCW 51.08.178, but not less than two hundred
13 seventy-six dollars per month.

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

18 ((+3)) (4) In case of permanent total disability, if the character
19 of the injury is such as to render the worker so physically helpless as
20 to require the hiring of the services of an attendant, the department
21 shall make monthly payments to such attendant for such services as long
22 as such requirement continues, but such payments shall not obtain or be
23 operative while the worker is receiving care under or pursuant to the
24 provisions of chapter 51.36 RCW and RCW 51.04.105.

25 ((+4)) (5) Should any further accident result in the permanent
26 total disability of an injured worker, he or she shall receive the
27 pension to which he or she would be entitled, notwithstanding the
28 payment of a lump sum for his or her prior injury.

29 ((+5)) (6) In no event shall the monthly payments provided in this
30 section((+)

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

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

1 June 30, 1995 115%

2 June 30, 1996 120%

3 ~~((b) For dates of injury or disease manifestation after July 1,~~
4 ~~2008, be less than fifteen percent of the average monthly wage in the~~
5 ~~state as computed under RCW 51.08.018 plus an additional ten dollars~~
6 ~~per month if a worker is married and an additional ten dollars per~~
7 ~~month for each child of the worker up to a maximum of five children.~~
8 ~~However, if the monthly payment computed under this subsection (5)(b)~~
9 ~~is greater than one hundred percent of the wages of the worker as~~
10 ~~determined under RCW 51.08.178, the monthly payment due to the worker~~
11 ~~shall be equal to the greater of the monthly wages of the worker or the~~
12 ~~minimum benefit set forth in this section on June 30, 2008.)~~)

13 The limitations under this subsection shall not apply to the
14 payments provided for in subsection ~~((+3+))~~ (4) of this section.

15 ~~((+6+))~~ (7) In the case of new or reopened claims, if the
16 supervisor of industrial insurance determines that, at the time of
17 filing or reopening, the worker is voluntarily retired and is no longer
18 attached to the workforce, benefits shall not be paid under this
19 section.

20 ~~((+7+))~~ (8) The benefits provided by this section are subject to
21 modification under RCW 51.32.067.

22 **Sec. 5.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
23 each reenacted and amended to read as follows:

24 (1) When the total disability is only temporary, the schedule of
25 payments contained in RCW 51.32.060 (1) and ~~((+2+))~~ (3) shall apply, so
26 long as the total disability continues.

27 (2) Any compensation payable under this section for children not in
28 the custody of the injured worker as of the date of injury shall be
29 payable only to such person as actually is providing the support for
30 such child or children pursuant to the order of a court of record
31 providing for support of such child or children.

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

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

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

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

16 ~~((c) The prior closure of the claim or the receipt of permanent
17 partial disability benefits shall not affect the rate at which loss of
18 earning power benefits are calculated upon reopening the claim.))~~

19 (4)(a) Whenever the employer of injury requests that a worker who
20 is entitled to temporary total disability under this chapter be
21 certified by a physician or licensed advanced registered nurse
22 practitioner as able to perform available work other than his or her
23 usual work, the employer shall furnish to the physician or licensed
24 advanced registered nurse practitioner, with a copy to the worker, a
25 statement describing the work available with the employer of injury in
26 terms that will enable the physician or licensed advanced registered
27 nurse practitioner to relate the physical activities of the job to the
28 worker's disability. The physician or licensed advanced registered
29 nurse practitioner shall then determine whether the worker is
30 physically able to perform the work described. The worker's temporary
31 total disability payments shall continue until the worker is released
32 by his or her physician or licensed advanced registered nurse
33 practitioner for the work, and begins the work with the employer of
34 injury. If the work thereafter comes to an end before the worker's
35 recovery is sufficient in the judgment of his or her physician or
36 licensed advanced registered nurse practitioner to permit him or her to
37 return to his or her usual job, or to perform other available work
38 offered by the employer of injury, the worker's temporary total

1 disability payments shall be resumed. Should the available work
2 described, once undertaken by the worker, impede his or her recovery to
3 the extent that in the judgment of his or her physician or licensed
4 advanced registered nurse practitioner he or she should not continue to
5 work, the worker's temporary total disability payments shall be resumed
6 when the worker ceases such work.

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

12 (c) If the worker returns to work under this subsection (4), any
13 employee health and welfare benefits that the worker was receiving at
14 the time of injury shall continue or be resumed at the level provided
15 at the time of injury. Such benefits shall not be continued or resumed
16 if to do so is inconsistent with the terms of the benefit program, or
17 with the terms of the collective bargaining agreement currently in
18 force.

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

22 (5) No worker shall receive compensation for or during the day on
23 which injury was received or the three days following the same, unless
24 his or her disability shall continue for a period of fourteen
25 consecutive calendar days from date of injury: PROVIDED, That attempts
26 to return to work in the first fourteen days following the injury shall
27 not serve to break the continuity of the period of disability if the
28 disability continues fourteen days after the injury occurs.

29 (6) Should a worker suffer a temporary total disability and should
30 his or her employer at the time of the injury continue to pay him or
31 her the wages which he or she was earning at the time of such injury,
32 such injured worker shall not receive any payment provided in
33 subsection (1) of this section during the period his or her employer
34 shall so pay such wages(~~(+ PROVIDED, That holiday pay, vacation pay,
35 sick leave, or other similar benefits shall not be deemed to be
36 payments by the employer for the purposes of this subsection))~~).

37 (7) In no event shall the monthly payments provided in this
38 section(~~(+~~

1 (a)) exceed the applicable percentage of the average monthly wage
2 in the state as computed under the provisions of RCW 51.08.018 as
3 follows:

AFTER	PERCENTAGE
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June 30, 1993	105%
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June 30, 1994	110%
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June 30, 1995	115%
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June 30, 1996	120%
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9 ~~((b) For dates of injury or disease manifestation after July 1,~~
10 ~~2008, be less than fifteen percent of the average monthly wage in the~~
11 ~~state as computed under RCW 51.08.018 plus an additional ten dollars~~
12 ~~per month if the worker is married and an additional ten dollars per~~
13 ~~month for each child of the worker up to a maximum of five children.~~
14 ~~However, if the monthly payment computed under this subsection (7)(b)~~
15 ~~is greater than one hundred percent of the wages of the worker as~~
16 ~~determined under RCW 51.08.178, the monthly payment due to the worker~~
17 ~~shall be equal to the greater of the monthly wages of the worker or the~~
18 ~~minimum benefit set forth in this section on June 30, 2008.))~~

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

22 **Sec. 6.** RCW 51.32.240 and 2008 c 280 s 2 are each amended to read
23 as follows:

24 (1)(a) Whenever any payment of benefits under this title is made
25 because of clerical error, mistake of identity, innocent
26 misrepresentation by or on behalf of the recipient thereof mistakenly
27 acted upon, or any other circumstance of a similar nature, all not
28 induced by willful misrepresentation, the recipient thereof shall repay
29 it and recoupment may be made from any future payments due to the
30 recipient on any claim with the state fund or self-insurer, as the case
31 may be. The department or self-insurer, as the case may be, must make
32 claim for such repayment or recoupment within one year of the making of
33 any such payment or it will be deemed any claim therefor has been
34 waived.

1 (b) Except as provided in subsections (3), (4), and (5) of this
2 section, the department may only assess an overpayment of benefits
3 because of adjudicator error when the order upon which the overpayment
4 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.
5 "Adjudicator error" includes the failure to consider information in the
6 claim file, failure to secure adequate information, or an error in
7 judgment.

8 (c) The director, pursuant to rules adopted in accordance with the
9 procedures provided in the administrative procedure act, chapter 34.05
10 RCW, may exercise his or her discretion to waive, in whole or in part,
11 the amount of any such timely claim where the recovery would be against
12 equity and good conscience.

13 (2) Whenever the department or self-insurer fails to pay benefits
14 because of clerical error, mistake of identity, or innocent
15 misrepresentation, all not induced by recipient willful
16 misrepresentation, the recipient may request an adjustment of benefits
17 to be paid from the state fund or by the self-insurer, as the case may
18 be, subject to the following:

19 (a) The recipient must request an adjustment in benefits within one
20 year from the date of the incorrect payment or it will be deemed any
21 claim therefore has been waived.

22 (b) The recipient may not seek an adjustment of benefits because of
23 adjudicator error. Adjustments due to adjudicator error are addressed
24 by the filing of a written request for reconsideration with the
25 department of labor and industries or an appeal with the board of
26 industrial insurance appeals within sixty days from the date the order
27 is communicated as provided in RCW 51.52.050. "Adjudicator error"
28 includes the failure to consider information in the claim file, failure
29 to secure adequate information, or an error in judgment.

30 (3) Whenever the department issues an order rejecting a claim for
31 benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for
32 temporary disability benefits has been paid by a self-insurer pursuant
33 to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the
34 recipient thereof shall repay such benefits and recoupment may be made
35 from any future payments due to the recipient on any claim with the
36 state fund or self-insurer, as the case may be. The director, under
37 rules adopted in accordance with the procedures provided in the
38 administrative procedure act, chapter 34.05 RCW, may exercise

1 discretion to waive, in whole or in part, the amount of any such
2 payments where the recovery would be against equity and good
3 conscience.

4 (4) Whenever any payment of benefits under this title has been made
5 pursuant to an adjudication by the department or by order of the board
6 or any court and timely appeal therefrom has been made where the final
7 decision is that any such payment was made pursuant to an erroneous
8 adjudication, the recipient thereof shall repay it and recoupment may
9 be made from any future payments due to the recipient on any claim
10 whether state fund or self-insured.

11 ~~((a))~~ The director, pursuant to rules adopted in accordance with
12 the procedures provided in the administrative procedure act, chapter
13 34.05 RCW, may exercise discretion to waive, in whole or in part, the
14 amount of any such payments where the recovery would be against equity
15 and good conscience. ~~((However, if the director waives in whole or in
16 part any such payments due a self-insurer, the self-insurer shall be
17 reimbursed the amount waived from the self-insured employer overpayment
18 reimbursement fund.~~

19 ~~(b) The department shall collect information regarding self-insured
20 claim overpayments resulting from final decisions of the board and the
21 courts, and recoup such overpayments on behalf of the self-insurer from
22 any open, new, or reopened state fund or self-insured claims. The
23 department shall forward the amounts collected to the self-insurer to
24 whom the payment is owed. The department may provide information as
25 needed to any self-insurers from whom payments may be collected on
26 behalf of the department or another self-insurer. Notwithstanding RCW
27 51.32.040, any self-insurer requested by the department to forward
28 payments to the department pursuant to this subsection shall pay the
29 department directly. The department shall credit the amounts recovered
30 to the appropriate fund, or forward amounts collected to the
31 appropriate self-insurer, as the case may be.~~

32 ~~(c) If a self-insurer is not fully reimbursed within twenty-four
33 months of the first attempt at recovery through the collection process
34 pursuant to this subsection and by means of processes pursuant to
35 subsection (6) of this section, the self-insurer shall be reimbursed
36 for the remainder of the amount due from the self-insured employer
37 overpayment reimbursement fund.~~

1 ~~(d) For purposes of this subsection, "recipient" does not include~~
2 ~~health service providers whose treatment or services were authorized by~~
3 ~~the department or self-insurer.~~

4 ~~(e) The department or self-insurer shall first attempt recovery of~~
5 ~~overpayments for health services from any entity that provided health~~
6 ~~insurance to the worker to the extent that the health insurance entity~~
7 ~~would have provided health insurance benefits but for workers'~~
8 ~~compensation coverage.)~~

9 (5)(a) Whenever any payment of benefits under this title has been
10 induced by willful misrepresentation the recipient thereof shall repay
11 any such payment together with a penalty of fifty percent of the total
12 of any such payments and the amount of such total sum may be recouped
13 from any future payments due to the recipient on any claim with the
14 state fund or self-insurer against whom the willful misrepresentation
15 was committed, as the case may be, and the amount of such penalty shall
16 be placed in the supplemental pension fund. Such repayment or
17 recoupment must be demanded or ordered within three years of the
18 discovery of the willful misrepresentation.

19 (b) For purposes of this subsection (5), it is willful
20 misrepresentation for a person to obtain payments or other benefits
21 under this title in an amount greater than that to which the person
22 otherwise would be entitled. Willful misrepresentation includes:

23 (i) Willful false statement; or

24 (ii) Willful misrepresentation, omission, or concealment of any
25 material fact.

26 (c) For purposes of this subsection (5), "willful" means a
27 conscious or deliberate false statement, misrepresentation, omission,
28 or concealment of a material fact with the specific intent of
29 obtaining, continuing, or increasing benefits under this title.

30 (d) For purposes of this subsection (5), failure to disclose a
31 work-type activity must be willful in order for a misrepresentation to
32 have occurred.

33 (e) For purposes of this subsection (5), a material fact is one
34 which would result in additional, increased, or continued benefits,
35 including but not limited to facts about physical restrictions, or
36 work-type activities which either result in wages or income or would be
37 reasonably expected to do so. Wages or income include the receipt of
38 any goods or services. For a work-type activity to be reasonably

1 expected to result in wages or income, a pattern of repeated activity
2 must exist. (~~For those activities that would reasonably be expected~~
3 ~~to result in wages or produce income, but for which actual wage or~~
4 ~~income information cannot be reasonably determined, the department~~
5 ~~shall impute wages pursuant to RCW 51.08.178(4).)~~)

6 (6) The worker, beneficiary, or other person affected thereby shall
7 have the right to contest an order assessing an overpayment pursuant to
8 this section in the same manner and to the same extent as provided
9 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
10 final under chapter 51.52 RCW and notwithstanding the provisions of
11 subsections (1) through (5) of this section, the director, director's
12 designee, or self-insurer may file with the clerk in any county within
13 the state a warrant in the amount of the sum representing the unpaid
14 overpayment and/or penalty plus interest accruing from the date the
15 order became final. The clerk of the county in which the warrant is
16 filed shall immediately designate a superior court cause number for
17 such warrant and the clerk shall cause to be entered in the judgment
18 docket under the superior court cause number assigned to the warrant,
19 the name of the worker, beneficiary, or other person mentioned in the
20 warrant, the amount of the unpaid overpayment and/or penalty plus
21 interest accrued, and the date the warrant was filed. The amount of
22 the warrant as docketed shall become a lien upon the title to and
23 interest in all real and personal property of the worker, beneficiary,
24 or other person against whom the warrant is issued, the same as a
25 judgment in a civil case docketed in the office of such clerk. The
26 sheriff shall then proceed in the same manner and with like effect as
27 prescribed by law with respect to execution or other process issued
28 against rights or property upon judgment in the superior court. Such
29 warrant so docketed shall be sufficient to support the issuance of
30 writs of garnishment in favor of the department or self-insurer in the
31 manner provided by law in the case of judgment, wholly or partially
32 unsatisfied. The clerk of the court shall be entitled to a filing fee
33 under RCW 36.18.012(10), which shall be added to the amount of the
34 warrant. A copy of such warrant shall be mailed to the worker,
35 beneficiary, or other person within three days of filing with the
36 clerk.

37 The director, director's designee, or self-insurer may issue to any
38 person, firm, corporation, municipal corporation, political subdivision

1 of the state, public corporation, or agency of the state, a notice to
2 withhold and deliver property of any kind if there is reason to believe
3 that there is in the possession of such person, firm, corporation,
4 municipal corporation, political subdivision of the state, public
5 corporation, or agency of the state, property that is due, owing, or
6 belonging to any worker, beneficiary, or other person upon whom a
7 warrant has been served for payments due the department or self-
8 insurer. The notice and order to withhold and deliver shall be served
9 by certified mail accompanied by an affidavit of service by mailing or
10 served by the sheriff of the county, or by the sheriff's deputy, or by
11 any authorized representative of the director, director's designee, or
12 self-insurer. Any person, firm, corporation, municipal corporation,
13 political subdivision of the state, public corporation, or agency of
14 the state upon whom service has been made shall answer the notice
15 within twenty days exclusive of the day of service, under oath and in
16 writing, and shall make true answers to the matters inquired or in the
17 notice and order to withhold and deliver. In the event there is in the
18 possession of the party named and served with such notice and order,
19 any property that may be subject to the claim of the department or
20 self-insurer, such property shall be delivered forthwith to the
21 director, the director's authorized representative, or self-insurer
22 upon demand. If the party served and named in the notice and order
23 fails to answer the notice and order within the time prescribed in this
24 section, the court may, after the time to answer such order has
25 expired, render judgment by default against the party named in the
26 notice for the full amount, plus costs, claimed by the director,
27 director's designee, or self-insurer in the notice. In the event that
28 a notice to withhold and deliver is served upon an employer and the
29 property found to be subject thereto is wages, the employer may assert
30 in the answer all exemptions provided for by chapter 6.27 RCW to which
31 the wage earner may be entitled.

32 This subsection shall only apply to orders assessing an overpayment
33 which are issued on or after July 28, 1991: PROVIDED, That this
34 subsection shall apply retroactively to all orders assessing an
35 overpayment resulting from fraud, civil or criminal.

36 (7) Orders assessing an overpayment which are issued on or after
37 July 28, 1991, shall include a conspicuous notice of the collection
38 methods available to the department or self-insurer.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.08 RCW
2 to read as follows:

3 The department may adopt rules necessary to implement RCW
4 51.08.178.

5 NEW SECTION. **Sec. 8.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 July 1, 2009.

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