Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Labor & Workforce Development Committee

HB 1868

Brief Description: Concerning long-term disability for injured workers.

Sponsors: Representative Sells.

Brief Summary of Bill

- Allows a worker awarded an industrial insurance pension to earn wages, with certain deductions from pension payments.
- Provides that a pension ends at federal retirement age when the residuals of the workplace injury are not the predominant factor causing the worker's inability to work or be retrained.
- Increases permanent partial disability awards by 30 percent, except for hearing loss awards.
- Authorizes State Fund employers to receive a wage subsidy and reimbursements for employing an injured worker at light duty or transitional work.
- Allows workers age 55 or older eligible for vocational retraining to select a settlement of one-third the value of the pension annuity.
- Establishes the Safety and Health Investment Projects program in statute.

Hearing Date: 2/9/11

Staff: Joan Elgee (786-7106).

Background:

Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (Department) or, if qualified, may self-insure. Workers who, in the course of employment, are injured or disabled from an occupational

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disease are entitled to benefits. Depending on the disability, workers are entitled to various benefits, including time-loss, pension, and medical benefits. With respect to medical benefits, workers are entitled to necessary and proper medical care from the provider the worker chooses.

The Workers Compensation Advisory Committee (WCAC) is a 10-member committee tasked with studying aspects of the workers compensation system. Workers and employers are represented on the committee.

Permanent total disability (pension).
A worker is entitled to a pension if the worker has lost two major limbs, or has total loss of eyesight, paralysis, or other condition permanently incapacitating the worker from performing any work at any gainful occupation. A worker receives 60 to 75 percent of the worker's wages depending on the workers' marital status and number of children, subject to a minimum and maximum. Pension benefits are payable to the worker as long as he or she remains totally disabled.

Permanent partial disability (PPD).
If permanent partial disability results from an injury, a worker receives one-time compensation under a statutory schedule. The schedule explicitly addresses amputation and loss of eyesight and vision. For unspecified disabilities, the compensation is based on the the proportion which the disability bears to the closest scheduled disability. Maximum PPD awards are adjusted annually using the U.S. Consumer Price Index (CPI). If the award is more than three times the average monthly wage, payment is made monthly, and interest is paid at the rate of 8 percent on the balance. A worker may apply to convert the monthly payment into a lump sum.

Return to work.
An employer may request that a worker receiving time-loss benefits be certified by a physician or Advanced Registered Nurse Practitioner (ARNP) to be able to perform work other than the usual work. The physician or ARNP must decide whether the worker is physically able to perform the work. If the light duty work comes to a end before the worker can return to the worker's usual job or the available work impedes the worker's recovery, time-loss payments resume.

Safety and Health Investment Projects (SHIP) program.
Beginning in 2008, the Legislature has appropriated funds from the Medical Aid Account to the Department for safety and health projects for State Fund workplaces. By the terms of the budget provisos, priority must be given to projects fostering accident prevention through cooperation between employers and employees or their representatives. The Department has adopted rules to implement the SHIP program. Grants may be awarded to trade and business associations, labor unions, employers, and other groups.

Summary of Bill:

Pensions.

Pensioners working.
A worker receiving a pension may receive wages, with the pension amount maintained or reduced as follows: if the wages or money received are 10 percent or less of the average

monthly wage, no reduction occurs; for wages in excess of 10 percent, the worker's pension is reduced by one dollar for every two dollars earned. However, benefits are not reduced if the worker is receiving a pension for loss of two major limbs, total loss of eyesight, or paralysis. Workers must report any earnings, wages, or employment annually to the Department. This provision applies to new and existing pensions.

Termination of certain pensions.
When the medical residuals of the workplace injury or disease are not the predominant factor causing a worker's inability to work or be retrained, benefits end when the worker reaches full federal retirement age. The medical residuals are the predominant factor when, considering the worker's entire circumstances, the worker would be able to work or be retrained but for the residuals. The termination of benefits applies to pension determinations made on or after July 1, 2011.

Pension award following a PPD award.
If a pension is awarded after a PPD award, all PPD compensation must be either deducted from the worker's monthly pension benefits or deducted from the pension reserve. Any interest paid is not deducted. This provision applies to pension determinations on or after July 1, 2011.

PPD.
The PPD schedule is increased by 30 percent for injuries occurring on or after July 1, 2011, except for hearing loss. Benefits continue to be adjusted annually to reflect the change in the CPI. Interest is no longer paid on PPD awards paid monthly. A worker may apply to a self-insured employer to convert a monthly PPD payment to a lump sum. However, only the Department may deny an application of a self-insured worker.

Stay at Work.
Legislative findings are made that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work. A statement from the worker's physician or advanced registered nurse practitioner (ARNP) that light duty or transitional work is consistent with the worker's medical restrictions must be obtained before the start of the light duty or transitional work.

A State Fund employer may receive a wage subsidy and other reimbursements under certain circumstances. To be eligible, an employer must submit a request for the subsidy or other reimbursement within one year of the date the work was performed. Wage subsidies and reimbursements are payable only if the physician or ARNP has restricted the worker from performing the worker's usual work and the physician or ARNP has released the worker to perform the work offered.

Wage subsidy.
The wage subsidy is 50 percent of basic, gross wages paid for the work for a maximum of 66 work days in a consecutive 24 month period, up to a maximum of $10,000. No subsidy is paid for compensation other than wages or salary, such as tips, health care, other specified payments, or any other payments. No subsidy is payable for a day in which the worker does not actually perform any work.

Reimbursement.

The employer is also eligible for reimbursement for the following:

- *Training or instruction*-Tuition, books, fees, and materials, up to $1,000.
- *Clothing*- Up to $400 is allowed. No reimbursement is available for any clothing that an employer normally provides to its workers and the clothing becomes the workers' property.
- *Tools or equipment*-The maximum is $2,500. The reimbursement does not apply to any tools or equipment purchased before offering the work to the worker or for tools or equipment that the employer normally provides. The tools and equipment are the property of the employer.

Payments made for wage subsidies and reimbursements through willful misrepresentation are subject to a penalty of the amount paid plus 50 percent. An employer's experience rating is not affected by wage subsidies. A dispute about the validity of the work offered or the worker's ability to perform is an appealable order. The reimbursements are paid out of a newly-created Stay-At-Work Account, which is funded by assessments of State Fund employers for the costs of the payments and a reserve. Employers may collect up to one-half the assessment from workers.

This provision sunsets July 1, 2016.

Disability Settlement.

A worker age 55 or older eligible for vocational plan development may decline further vocational services and elect to receive a disability settlement of one-third the value of the pension annuity. Any prior PPD awards must be deducted. The worker has at least 60 days to make the selection. If the worker elects the settlement, the Department closes the claim. The worker continues to receive time-loss until the order closing the claim becomes final, after which the award is paid in a lump sum within 10 days. Time-loss payments received after the order was issued are deducted. A worker selecting the option may reopen a claim for medical treatment only. If a worker selecting the option is subsequently injured or suffers an occupational disease, vocational rehabilitation benefits may be provided at the discretion of the Director of the Department. The option is not available to a worker who suffered the loss of two major limbs, total loss of eyesight, or paralysis. This provision applies to workers age 55 or older found eligible for vocational plan development on or after July 1, 2011.

SHIP Program.

The SHIP program is placed in statute. The Director may provide funding from the Medical Aid Fund, by grant or contract, for projects for State Fund workplaces. The authority includes projects to prevent workplace injuries, illnesses, and fatalities; create early return-to-work programs; and reduce long-term disability through the cooperation of employers and employees or their representatives. Organizations that may receive awards include trade and business associations, employers and employees, labor unions, employee organizations, joint labor and management groups, and education institutions in collaboration with State Fund employer and employee representatives. Funds may not be used for lobbying or political activities; supporting, opposing, or developing legislative or regulatory initiatives; any activity not designed to reduce workplace injuries, illnesses, or fatalities; or reimbursing employers for the normal costs of complying with safety and health rules. Awards should foster the development and implementation of innovative and effective return-to-work programs that lead to improved outcomes for injured workers.

Funds must be distributed as follows:

- 25 percent - projects designed to develop and implement innovative and effective return-to-work programs for injured workers;
- 25 percent - projects that specifically address small business needs; and
- 50 percent - projects that foster workplace injury and illness prevention by addressing priorities identified by the department in cooperation with the Washington Industrial Safety and Health Act Advisory Committee and the WCAC.

A report will be issued to the appropriate legislative committees, the Department, and the WCAC by December 1, 2014 regarding utilization, worker satisfaction and outcomes, and system and employer costs relating to permanent partial and total disability and the disability settlement option. The WCAC must recommend to the Department any legislation needed to ensure the appropriate utilization of disability benefits at reasonable cost to the system.

Appropriation: None.

Fiscal Note: Requested on February 7, 2011.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2011.