

SENATE BILL REPORT

ESHB 2002

As of March 23, 2011

Title: An act relating to industrial insurance employer wage subsidies and reimbursements for light duty or transitional work.

Brief Description: Concerning industrial insurance employer wage subsidies and reimbursements for light duty or transitional work.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Sells, Ryu, Ormsby and Kenney).

Brief History: Passed House: 3/05/11, 54-43.

Committee Activity: Labor, Commerce & Consumer Protection: 3/15/11.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Mac Nicholson (786-7445)

Background: The state Industrial Insurance Program provides medical and other benefits to workers who suffer a work-related injury or develop an occupational disease. The Industrial Insurance Program is administered by the Department of Labor and Industries (L&I), and is funded through a premium collected from employers and employees in the state. Workers are entitled to workers compensation benefits depending on the type of injury or disease and whether the injury or disease precludes any further gainful employment.

An employer can offer an injured worker a transitional or light-duty job in order to return the injured worker to work. Prior to employing the injured worker in a transitional or light-duty job, the employer must receive approval from the worker's health care provider. An injured worker who returns to work cannot collect temporary total disability benefits (time-loss), though the worker may be entitled to loss of earning power benefits.

Summary of Bill: Return-to-work provisions are amended. Prior to the start of any light-duty or transitional work, L&I must obtain a statement from the attending health care provider confirming the light-duty or transitional work offered by the employer is consistent with the worker's medical restrictions. This statement must be provided to the employer within three days. Time-loss benefits stop on the effective date the light-duty or transitional work starts.

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.

A state fund employer who offers light-duty or transitional work can seek reimbursement for 50 percent of the injured worker's wages. Reimbursement can be provided for up to 66 work days in a two-year period, and the amount of reimbursement cannot exceed \$10,000 on any claim. Reimbursement is calculated using the worker's basic hourly wage or salary, excluding any other form of compensation to the worker, such as tips, commissions, bonuses, and health care. The worker must actually perform work in order for the employer to claim reimbursement. An employer may also seek reimbursement for training materials, clothes, tools, or equipment provided to the injured worker in order to perform light-duty or transitional work.

A request for reimbursement must be made within one year of the date the work was performed, and will not be paid unless the worker's health care provider restricted the worker from performing his or her usual work, and released the worker to perform the light-duty or transitional work.

An employer's experience rating is not affected by the employer's request for or receipt of reimbursement. All reimbursements are paid out of the Washington Stay-at-Work Account, which is funded by assessments collected from state fund employers. Up to one-half of the assessment may be collected from workers.

The legislation expires July 1, 2016.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The intent of the bill is to get people back to light-duty and transitional work, and is modeled after an Oregon program. The bill presents substantial savings. Return to work incentives are good for business, workers, and the workers compensation system. This bill will save money in the workers compensation system by bringing workers back to work. The bill will cut long-term and permanent disability rates by keeping workers attached to the workforce. There needs to be some protection in the bill to keep employers from pressuring doctors to get injured workers back to work. This bill will help keep the experience rating of employers down. This bill will give employers resources to bring injured workers back to light duty. This bill gets people back to work, and an injured worker who stays connected to the employer is less likely to get a pension.

CON: The stay-at-work subsidy program is valuable. The issue with the legislation is the insertion of L&I in every return to work effort. Under the legislation, L&I would be required to get certification in all retro, COHE, and self-insured claims. Currently, the employer and doctor work together on return to work and the system works well. The business community agrees to the concept of the program as part of SB 5566 as it passed the Senate, but in the context of broader reform. To achieve cost savings, back-end pension costs must be

addressed as well. The subsidy piece should not be pulled out as a stand alone bill. This language doesn't achieve enough cost savings, and includes a new payroll tax. The program would only benefit larger employers. Small employers wouldn't benefit, as they don't have light-duty jobs, regardless of whether there is a wage subsidy. Every employer will be assessed a fee for this program, regardless of whether they use it. Now is not the time to be adding costs to the system.

Persons Testifying: PRO: Representative Sells, prime sponsor; Rebecca Johnson, Washington State Labor Council; Nicole Grant, International Brotherhood of Electrical Workers; Sharon Ness, United Food Commercial Workers, State Council; Cody Arledge, Sheet Metal Workers 66.

CON: Vickie Kennedy, L&I; Kris Tefft, Association of Washington Business; Patrick Connor, National Federation of Independent Business; Scott Dilley, Washington Farm Bureau; Kathleen Collins, Washington Self Insurer's Association.