

SENATE BILL REPORT

EHB 2123

As of Second Reading

Title: An act relating to stabilizing workers' compensation premium rates and claim costs through the limited means of creating the stay-at-work program, suspending cost-of-living adjustments for fiscal year 2012 with no catch-up and delaying the initial adjustment, allowing claim resolution structured settlements for injured workers age fifty-five and older effective 2012, fifty-three and older effective 2015, and fifty and older effective 2016, adjusting pension benefits for prior permanent partial disability awards, eliminating the interest on permanent partial disability award schedules, providing safety and health investment grants, creating the industrial insurance rainy day fund, directing the department of labor and industries to increase its employer, worker, and provider fraud prevention efforts, requiring a performance audit by the joint legislative audit and review committee of workers' compensation claims management in the workers' compensation system to include self-insured claims, and studying occupational disease claims in the workers' compensation system.

Brief Description: Addressing the workers' compensation system.

Sponsors: Representatives Green and Condotta; by request of Governor Gregoire.

Brief History: Passed House: 5/23/11, 69-26.

Committee Activity:

Staff: Mac Nicholson (786-7445)

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 may self-insure if qualified. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities. The act provides that a worker may not waive industrial insurance benefits by an agreement and that any such agreement is void.

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

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.

Temporary Time-Loss and Permanent Total Disability. Workers temporarily unable to work receive time-loss benefits. A worker who suffers specified catastrophic injuries or other condition permanently incapacitating the worker from performing any work at any gainful occupation is entitled to permanent total disability (TPD or also referred to as pension) benefits. The amount of the time-loss or pension benefits is 60 to 75 percent of the worker's wages, depending on the worker's family status and number of dependents, and subject to minimum and maximum amounts. Certain survivors are also entitled to benefits.

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 light duty or transitional work. The physician or ARNP must decide whether the worker is physically able to perform the work and if so, the time-loss benefits end.

Permanent Partial Disability. If a permanent partial disability (PPD) results from an injury, a worker receives one-time compensation under a statutory schedule. 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.

If a worker receives a pension award following a PPD award, any portion of the PPD award that exceeds the amount that would have been paid if the TPD award had been paid in the first instance is deducted from the worker's TPD benefits. This provision has been interpreted to result in no deduction of PPD awards in many cases. If amounts are deducted, the worker has a choice of whether the deduction is from the worker's monthly benefit amount or from the pension reserve of the worker. The deduction from the monthly benefit amount is capped at 25 percent of the monthly amount or one-sixth the total overpayment, whichever is less.

Cost-of-Living Adjustment. Workers receiving time-loss, and workers receiving a pension and their survivors receive a cost-of-living adjustment (COLA) on July 1 of each year. The COLA begins the first July 1 after injury. The COLA is based on the average monthly wage, and the formula depends on whether the worker began receiving compensation before, or on or after July 1, 1971.

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.

Premiums and Funds. State Fund employers pay into the Accident Fund, which pays for time-loss and PPD and pension benefits, and the Medical Aid Fund, which pays for medical and vocational rehabilitation benefits. Workers also pay into the Medical Aid Fund. The Department classifies industries by risk and sets basic premium rates. The basic premium rate is adjusted by an experienced rating for each employer. The rates must be the lowest necessary to maintain the actuarial solvency of the Accident and Medical Aid Funds in

accordance with recognized insurance principles, and must be designed to attempt to limit fluctuations in premium rates. The WCAC advises the Department on appropriate levels of a contingency reserve, and when surplus funds exist, the circumstances under which the Department should give premium dividends, or similar measures, or temporarily reduce rates.

Summary of Bill: Claim Resolution Structured Settlement Option. Structured settlements are available for injured workers older than 55 and is phased in to allow workers 50 and older to participate in structured settlement by 2016. The option will allow workers to resolve their claim by taking an initial payment of up to six times the average monthly wage and structured periodic payments equal to at least 25 percent and no more than 150 percent of the state's average wage per month or \$982 to \$5, 976 until the settlement is paid in full.

- Medical benefits are not part of the claims resolution structured settlements option.
- Workers and insurers must wait 180 days before entering discussions.
- Unrepresented workers must have a conference with industrial appeals judge.
- Unrepresented workers in self-insured can request the self-insured ombudsman be a resource or present during the negotiations.
- All agreements must be approved by the Board of Industrial Insurance Appeals.
- Agreements for unrepresented workers must be in the worker's best interest.
- Attorneys fees are capped at 15 percent of the total settlement.
- There is a cooling off period of 30 days when the agreement can be revoked.
- In calendar years 2015, 2019, and 2023, the Department must contract for an independent study of claim resolution.

Washington Stay at Work Program. The Stay at Work Program offers wage subsidies to employers who bring injured workers back to work. 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. 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.

Prior Disability Awards. A worker eligible for a permanent total disability pension will have all prior disability awards paid on that same claim deducted from the worker's monthly pension payment or from the pension reserve of the worker. Also, when permanent partial disability awards are paid over time, interest on the unpaid balance will no longer be included.

COLA Freeze. The COLA on workers' compensation pensions and time-loss is frozen for 2011.

Rainy Day Fund. The industrial insurance rainy day account is created in the state treasury. When the combined assets in the accident and medical funds are more than 10 percent of liabilities the director must transfer the excess to the rainy day account. If the director intends to increase average rates for either fund, the amount of the increase must first be funded from the rainy day account. The rainy day fund and the accident and medical aid funds are capped when the combined amounts exceed 30 percent of liabilities.

A finance subcommittee is established to provide for recommendations for changes to the rainy day account.

Fraud Prevention Initiative. The current best practices used to address employer fraud are applied to workers and providers. The Department will:

- participate in a national information exchange with other workers' compensation insurers to avoid duplication of claims and benefits;
- establish criteria for periodic review of total permanent disability pension recipients including their level of disability and physical activity to determine whether they can be gainfully employed;
- identify provider billing patterns to target potentially abusive practices; and
- provide a report to the Governor and legislative committees by December 1, 2012, that describes the agency's efforts and outcomes.

The Joint Legislative Audit and Review Committee (JLARC) is to conduct a performance audit of claims management. The audit must evaluate the extent to which the Department makes fair and timely decisions, and resolves complaints and disputes in a timely, fair, and effective manner. The audit must also determine if current claims management organization and service delivery models are the most efficient available.

Progress reports are due by December 1, 2012, and December 1, 2013, and the results of the audit by June 30, 2015.

SHIP. The SHIP program at the Department is codified in statute. The Department is authorized to provide SHIP funding from the Medical Aid Fund for workplaces insured through the state fund. Projects receiving funding must prevent workplace injuries, illnesses, and fatalities; create early return-to-work programs; and reduce long-term disability. Recipients of funding are specified and include employers, business associations, employees, and labor unions. SHIP funds cannot be used for activities as specified in the legislation, including lobbying, political activities, or any activities not designed to reduce workplace injuries, illnesses, or fatalities. SHIP funds are to be distributed as follows:

- 25 percent for projects designed to develop and implement innovative and effective return to work programs;
- 25 percent for projects that specifically address the needs of small businesses; and
- 50 percent for projects that foster workplace injury and illness prevention.

The WCAC is to assist in identifying priorities for SHIP grants.

Occupational Disease Study. The Department is to contract with an independent entity to study occupational disease claims in Washington. The study and report are due December 1, 2012.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.