

SENATE BILL REPORT

SB 5566

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 21, 2011

Title: An act relating to reducing long-term disability for injured workers and resulting costs to Washington's workers' compensation system.

Brief Description: Concerning long-term disability for injured workers and costs to the workers' compensation program.

Sponsors: Senators Kohl-Welles and Kline; by request of Governor Gregoire.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/01/11, 2/21/11 [w/oRec].

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. The Workers Compensation Advisory Committee (WCAC) is a ten-member committee tasked with studying aspects of the workers compensation and includes representatives of business, labor, and L&I.

Safety and Health Investment Projects (SHIP). The SHIP program at L&I provides grant funding to projects designed to demonstrate or validate new and improved techniques to safeguard the health and safety of employees. The SHIP program was authorized in the 2007-2009 budget, and funding comes from the Medical Aid Account. The SHIP program is defined and governed by administrative rules adopted by L&I. SHIP grants can be awarded to employers, employees, associations, labor unions, and other groups as determined by L&I.

Permanent Total Disability Pensions. Workers who suffer certain types of injuries and workers whose injuries preclude any further gainful employment are entitled to permanent total disability pensions. Pension benefits are paid monthly, and are based on the amount of time-loss compensation to which the worker is entitled, which is calculated using the workers

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wages, family status, dependents, and other factors. Pension benefits are paid for the life of the injured worker, though a worker receiving a pension can opt to receive a reduced pension with his or her beneficiary receiving pension payments upon the death of the worker.

If a worker receiving a pension returns to gainful employment for wages, L&I may suspend or terminate the pension.

Permanent Partial Disabilities (PPD). A worker whose injury or occupational disease caused permanent loss of bodily function is eligible for a PPD award. The amount of the award is established in statute and is adjusted annually to reflect the change in the consumer price index. PPD awards are based on the degree of impairment suffered by the injured worker, and are not based on whether the injured worker can continue to work.

Transitional or Light Duty Work. 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.

Vocational Rehabilitation. Injured workers are eligible for vocational rehabilitation benefits when they cannot return to their old job due to the effects of their injury and the worker lacks the training or skills for a different job to become employable. An injured worker seeking vocational benefits must develop a training plan, and submit the plan to L&I for approval. A vocational retraining plan includes a job goal based on the worker's skills, interests, and medically documented limitations.

Medical Providers. An injured worker can see the medical professional of his or her choice who is qualified to treat the injury.

Centers of Occupational Health and Education (COHE) are resources that attempt to improve injured worker outcomes, and reduce disability through community-based health care delivery. COHE efforts focus on the first 12 weeks of a claim and promote disability prevention through helping coordinate health services and return to work activities, assisting providers to adopt occupational health best practices, and early identification of cases that appear to be at risk for long-term disability. There are currently four COHEs in the state: Renton COHE at Valley Medical Center; Eastern Washington COHE at St. Luke's Rehabilitation Institute in Spokane; the Everett Clinic; and Harborview Medical Center.

Summary of Bill: SHIP. The SHIP program at L&I is codified in statute. L&I 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.

Permanent Total Disability Pensions. A worker who has been awarded a permanent total disability pension, but retains a limited ability to work, will not have his or her pension payment reduced for earning wages amounting to 10 percent or less of the average monthly wage as established by ESD. If the worker earns more than 10 percent of the average wage, L&I reduces the worker's monthly pension payments by \$1 for every \$2 earned above the 10 percent threshold. Pension payments are not reduced for workers who are receiving pensions for the loss of two major limbs, total loss of eyesight, or paralysis. Workers must report wages annually to L&I.

Permanent total disability pensions awarded after July 1, 2011, are cut off at full federal retirement age for individuals if the medical residuals of their work related injury are not the predominant factor causing the individual's inability to work or be retrained. 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 medical residuals. Laws providing for benefits to the surviving spouse or dependent of pensioner who dies from a cause unrelated to the injury are amended to reflect the termination of certain pensions at federal retirement age.

Permanent Partial Disabilities (PPD). The current PPD awards are increased 30 percent for injuries occurring on or after July 1, 2011. Awards for hearing loss are unchanged. Awards continue to be adjusted annually based on the consumer price index. A worker eligible for a permanent total disability pension will have all PPD awards on that same claim deducted from the worker's monthly pension payment or from the pension reserve of the worker. Interest paid on PPD awards is not deducted from the pension award.

Interest no longer accrues on the unpaid balance of any PPD award. Self-insured employers have the authority to convert monthly PPD payments into a lump sum payment upon application by the injured worker.

Transitional or Light Duty Work. Return-to-work provisions are amended. An employer may provide light duty or transitional work to an injured worker without first seeking permission to do so from a health care provider. Temporary total disability payments stop when an injured worker starts light duty or transitional 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. 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.

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.

Vocational Rehabilitation. A worker who is eligible for vocational retraining and is at least 55 years of age can elect to decline vocational service and receive a disability settlement. The amount of the settlement is equal to one-third of the value of the pension annuity calculated as though the worker had been found totally and permanently disabled. A worker must have at least 60 days to select a settlement, and can opt for a settlement at any time during vocational plan development. The worker continues to receive temporary total disability until the settlement is confirmed by an order of L&I. The settlement is paid in a lump sum, and the worker's claim is closed. A settlement recipient can reopen his or her claim for medical treatment only upon a showing of worsening medical conditions. Settlements are not available to a worker who has suffered the loss of two major limbs, total loss of eyesight, or paralysis.

Medical Providers. L&I must establish a health care provider network to treat injured workers. Providers who meet minimum standards are accepted into the network and must agree to follow L&I coverage decisions, policies, treatment guidelines and consider other industry treatment guidelines. Providers who follow L&I established best practice standards can qualify for a second tier within the network. Financial and nonfinancial incentives may be provided to second tier providers. L&I is to convene an advisory group to advise the department on issues related to the implementation of the network. Once a provider network is established in a worker's geographic area, an injured worker would need to seek medical services from a health care provider in the network.

Providers failing to meet minimum network standards can be temporarily or permanently removed from the network.

L&I must establish additional COHEs, with a goal of extending access to all injured workers by December 2015. L&I can certify or decertify COHEs based on criteria listed in the legislation. Incentives can be established for COHE providers, and electronic methods of tracking measures to identify and improve outcomes for injured workers are to be developed.

Studies and Reports. L&I must report annually, starting in 2012 and ending in 2016, on implementation of the medical provider network and COHE expansion.

A study must be conducted on the utilization, worker satisfaction and outcomes, and system and employer costs related to permanent total disability benefits, permanent partial disability benefits, and disability settlements. This study is due December 1, 2014.

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: This bill is a critical part of the Governor's jobs creation package. This bill will reduce costs and provide better outcomes for workers. Changes in the bill will help reduce future rate increases. As a result of this legislation, workers and businesses will have more money to reinvest in the economy. L&I is concerned about long-term pension trends. Washington has some of the longest lasting claims involving time loss compensation. The pieces of this bill are designed to work together. Changing trends around long-term disability is complicated but requires action. The medical provider network, COHE, SHIP program, and wage subsidy pieces all support timely action after injury to get workers back to work while they recover. The pension and award changes work together to redirect more benefits toward better outcomes with the goal of sustaining a system with a high quality benefit package for workers.

CON: The bill contains a number of disparate pathways that don't address the fundamental problem. The COHE expansion and provider network will help lower pension rates and costs. The voluntary settlement piece in the legislation is a bad idea and leads down the slope of compromise and release. The piece cutting off pensions at retirement age is troubling, as you won't know what situation you are putting folks into when cutting off their pension. Pieces of the legislation turn the workers compensation system on its head. Not all individuals will receive social security at retirement age.

OTHER: Businesses are struggling with industrial insurance rate increases. There are pieces of the bill that are good, including the medical provider networks and COHEs, but the benefit increases in the legislation will hurt businesses. Voluntary negotiated settlements should be permitted and is key to lowering costs. The state's system isn't competitive, and has high costs and high benefits.

Persons Testifying: PRO: Peter Bogdanoff, Governor's Office; Judy Schurke, L&I.

CON: David Johnson, Washington State Building Trades; Rebecca Johnson, Washington State Labor Council; Sharon Ness, UFCW; Cody Arledge, SMW 66; Nicole Grant, CEWW.

OTHER: Mike Seeger, Fife Flowers; Paulette Gilliardi, Gilliardi Logging; Rick Anderson, Sakuma Bros.; Darren McCallon, True Blue, Inc.; Tina Coakley, Boeing; Donna Egeland, Alaska Airlines, Horizon Air; Katrina Zitnik, Costco Wholesale; Kathy Comfort; Wayne Lieb, Putnam Lieb; Randy Loomans, IUOE 302.