
ENGROSSED SUBSTITUTE HOUSE BILL 1725

State of Washington

62nd Legislature

2011 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Sells, Reykdal, Ormsby, Kenney, and Upthegrove; by request of Department of Labor & Industries)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to administrative efficiencies for the workers'
2 compensation program; amending RCW 51.04.030, 51.04.082, 51.24.060,
3 51.32.240, 51.48.120, 51.48.150, and 51.52.050; adding a new section to
4 chapter 51.18 RCW; and adding a new section to chapter 51.36 RCW.

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

6 **Sec. 1.** RCW 51.04.030 and 2004 c 65 s 1 are each amended to read
7 as follows:

8 (1) The director shall supervise the providing of prompt and
9 efficient care and treatment, including care provided by physician
10 assistants governed by the provisions of chapters 18.57A and 18.71A
11 RCW, acting under a supervising physician, including chiropractic care,
12 and including care provided by licensed advanced registered nurse
13 practitioners, to workers injured during the course of their employment
14 at the least cost consistent with promptness and efficiency, without
15 discrimination or favoritism, and with as great uniformity as the
16 various and diverse surrounding circumstances and locations of
17 industries will permit and to that end shall, from time to time,
18 establish and adopt and supervise the administration of printed forms,
19 rules, regulations, and practices for the furnishing of such care and

1 treatment: PROVIDED, That the medical coverage decisions of the
2 department do not constitute a "rule" as used in RCW 34.05.010(16), nor
3 are such decisions subject to the rule-making provisions of chapter
4 34.05 RCW except that criteria for establishing medical coverage
5 decisions shall be adopted by rule after consultation with the workers'
6 compensation advisory committee established in RCW 51.04.110: PROVIDED
7 FURTHER, That the department may recommend to an injured worker
8 particular health care services and providers where specialized
9 treatment is indicated or where cost effective payment levels or rates
10 are obtained by the department: AND PROVIDED FURTHER, That the
11 department may enter into contracts for goods and services including,
12 but not limited to, durable medical equipment so long as statewide
13 access to quality service is maintained for injured workers.

14 (2) The director shall, in consultation with interested persons,
15 establish and, in his or her discretion, periodically change as may be
16 necessary, and make available a fee schedule of the maximum charges to
17 be made by any physician, surgeon, chiropractor, hospital, druggist,
18 licensed advanced registered nurse practitioner, physicians' assistants
19 as defined in chapters 18.57A and 18.71A RCW, acting under a
20 supervising physician or other agency or person rendering services to
21 injured workers. The department shall coordinate with other state
22 purchasers of health care services to establish as much consistency and
23 uniformity in billing and coding practices as possible, taking into
24 account the unique requirements and differences between programs. No
25 service covered under this title, including services provided to
26 injured workers, whether aliens or other injured workers, who are not
27 residing in the United States at the time of receiving the services,
28 shall be charged or paid at a rate or rates exceeding those specified
29 in such fee schedule, and no contract providing for greater fees shall
30 be valid as to the excess. The establishment of such a schedule,
31 exclusive of conversion factors, does not constitute "agency action" as
32 used in RCW 34.05.010(3), nor does such a fee schedule and its
33 associated billing or payment instructions and policies constitute a
34 "rule" as used in RCW 34.05.010(16).

35 (3) The director or self-insurer, as the case may be, shall make a
36 record of the commencement of every disability and the termination
37 thereof and, when bills are rendered for the care and treatment of
38 injured workers, shall approve and pay those which conform to the

1 adopted rules, regulations, established fee schedules, and practices of
2 the director and may reject any bill or item thereof incurred in
3 violation of the principles laid down in this section or the rules,
4 regulations, or the established fee schedules and rules and regulations
5 adopted under it.

6 **Sec. 2.** RCW 51.04.082 and 1986 c 9 s 2 are each amended to read as
7 follows:

8 Any notice or order required by this title to be mailed to any
9 employer may be served in the manner prescribed by law for personal
10 service of summons and complaint in the commencement of actions in the
11 superior courts of the state, but if the notice or order is mailed, it
12 shall be addressed to the address of the employer as shown by the
13 records of the department, or, if no such address is shown, to such
14 address as the department is able to ascertain by reasonable effort.
15 If requested by the employer, any notice or order may be sent by secure
16 electronic means except orders communicating the closure of a claim.
17 Correspondence and notices sent electronically are considered received
18 on the date sent by the department. Failure of the employer to receive
19 such notice or order whether served or mailed shall not release the
20 employer from any tax or any increases or penalties thereon.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 RCW
22 to read as follows:

23 Payment by an employer for direct primary care services as defined
24 in RCW 48.150.010 does not disqualify: (1) An employer from
25 participating in the retrospective rating plan; (2) a group sponsor
26 from promoting a retrospective rating plan; or (3) a plan administrator
27 from administering a retrospective rating plan.

28 **Sec. 4.** RCW 51.24.060 and 2001 c 146 s 9 are each amended to read
29 as follows:

30 (1) If the injured worker or beneficiary elects to seek damages
31 from the third person, any recovery made shall be distributed as
32 follows:

33 (a) The costs and reasonable attorneys' fees shall be paid
34 proportionately by the injured worker or beneficiary and the department
35 and/or self-insurer: PROVIDED, That the department and/or self-insurer

1 may require court approval of costs and attorneys' fees or may petition
2 a court for determination of the reasonableness of costs and attorneys'
3 fees;

4 (b) The injured worker or beneficiary shall be paid twenty-five
5 percent of the balance of the award: PROVIDED, That in the event of a
6 compromise and settlement by the parties, the injured worker or
7 beneficiary may agree to a sum less than twenty-five percent;

8 (c) The department and/or self-insurer shall be paid the balance of
9 the recovery made, but only to the extent necessary to reimburse the
10 department and/or self-insurer for benefits paid;

11 (i) The department and/or self-insurer shall bear its proportionate
12 share of the costs and reasonable attorneys' fees incurred by the
13 worker or beneficiary to the extent of the benefits paid under this
14 title: PROVIDED, That the department's and/or self-insurer's
15 proportionate share shall not exceed one hundred percent of the costs
16 and reasonable attorneys' fees;

17 (ii) The department's and/or self-insurer's proportionate share of
18 the costs and reasonable attorneys' fees shall be determined by
19 dividing the gross recovery amount into the benefits paid amount and
20 multiplying this percentage times the costs and reasonable attorneys'
21 fees incurred by the worker or beneficiary;

22 (iii) The department's and/or self-insurer's reimbursement share
23 shall be determined by subtracting their proportionate share of the
24 costs and reasonable attorneys' fees from the benefits paid amount;

25 (d) Any remaining balance shall be paid to the injured worker or
26 beneficiary; and

27 (e) Thereafter no payment shall be made to or on behalf of a worker
28 or beneficiary by the department and/or self-insurer for such injury
29 until the amount of any further compensation and benefits shall equal
30 any such remaining balance minus the department's and/or self-insurer's
31 proportionate share of the costs and reasonable attorneys' fees in
32 regards to the remaining balance. This proportionate share shall be
33 determined by dividing the gross recovery amount into the remaining
34 balance amount and multiplying this percentage times the costs and
35 reasonable attorneys' fees incurred by the worker or beneficiary.
36 Thereafter, such benefits shall be paid by the department and/or self-
37 insurer to or on behalf of the worker or beneficiary as though no
38 recovery had been made from a third person.

1 (2) The recovery made shall be subject to a lien by the department
2 and/or self-insurer for its share under this section.

3 (3) The department or self-insurer has sole discretion to
4 compromise the amount of its lien. In deciding whether or to what
5 extent to compromise its lien, the department or self-insurer shall
6 consider at least the following:

7 (a) The likelihood of collection of the award or settlement as may
8 be affected by insurance coverage, solvency, or other factors relating
9 to the third person;

10 (b) Factual and legal issues of liability as between the injured
11 worker or beneficiary and the third person. Such issues include but
12 are not limited to possible contributory negligence and novel theories
13 of liability; and

14 (c) Problems of proof faced in obtaining the award or settlement.

15 (4) In an action under this section, the self-insurer may act on
16 behalf and for the benefit of the department to the extent of any
17 compensation and benefits paid or payable from state funds.

18 (5) It shall be the duty of the person to whom any recovery is paid
19 before distribution under this section to advise the department or
20 self-insurer of the fact and amount of such recovery, the costs and
21 reasonable attorneys' fees associated with the recovery, and to
22 distribute the recovery in compliance with this section.

23 (6) The distribution of any recovery made by award or settlement of
24 the third party action shall be confirmed by department order, served
25 by (~~registered or certified mail~~) a method for which receipt can be
26 confirmed or tracked, and shall be subject to chapter 51.52 RCW. In
27 the event the order of distribution becomes final under chapter 51.52
28 RCW, the director or the director's designee may file with the clerk of
29 any county within the state a warrant in the amount of the sum
30 representing the unpaid lien plus interest accruing from the date the
31 order became final. The clerk of the county in which the warrant is
32 filed shall immediately designate a superior court cause number for
33 such warrant and the clerk shall cause to be entered in the judgment
34 docket under the superior court cause number assigned to the warrant,
35 the name of such worker or beneficiary mentioned in the warrant, the
36 amount of the unpaid lien plus interest accrued and the date when the
37 warrant was filed. The amount of such warrant as docketed shall become
38 a lien upon the title to and interest in all real and personal property

1 of the injured worker or beneficiary against whom the warrant is
2 issued, the same as a judgment in a civil case docketed in the office
3 of such clerk. The sheriff shall then proceed in the same manner and
4 with like effect as prescribed by law with respect to execution or
5 other process issued against rights or property upon judgment in the
6 superior court. Such warrant so docketed shall be sufficient to
7 support the issuance of writs of garnishment in favor of the department
8 in the manner provided by law in the case of judgment, wholly or
9 partially unsatisfied. The clerk of the court shall be entitled to a
10 filing fee under RCW 36.18.012(10), which shall be added to the amount
11 of the warrant. A copy of such warrant shall be mailed to the injured
12 worker or beneficiary within three days of filing with the clerk.

13 (7) The director, or the director's designee, may issue to any
14 person, firm, corporation, municipal corporation, political subdivision
15 of the state, public corporation, or agency of the state, a notice and
16 order to withhold and deliver property of any kind if he or she has
17 reason to believe that there is in the possession of such person, firm,
18 corporation, municipal corporation, political subdivision of the state,
19 public corporation, or agency of the state, property which is due,
20 owing, or belonging to any worker or beneficiary upon whom a warrant
21 has been served by the department for payments due to the state fund.
22 The notice and order to withhold and deliver shall be served by the
23 sheriff of the county or by the sheriff's deputy; by ~~((certified mail,~~
24 ~~return receipt requested))~~ a method for which receipt can be confirmed
25 or tracked; or by any authorized representatives of the director. Any
26 person, firm, corporation, municipal corporation, political subdivision
27 of the state, public corporation, or agency of the state upon whom
28 service has been made shall answer the notice within twenty days
29 exclusive of the day of service, under oath and in writing, and shall
30 make true answers to the matters inquired of in the notice and order to
31 withhold and deliver. In the event there is in the possession of the
32 party named and served with such notice and order, any property which
33 may be subject to the claim of the department, such property shall be
34 delivered forthwith to the director or the director's authorized
35 representative upon demand. If the party served and named in the
36 notice and order fails to answer the notice and order within the time
37 prescribed in this section, the court may, after the time to answer
38 such order has expired, render judgment by default against the party

1 named in the notice for the full amount claimed by the director in the
2 notice together with costs. In the event that a notice to withhold and
3 deliver is served upon an employer and the property found to be subject
4 thereto is wages, the employer may assert in the answer to all
5 exemptions provided for by chapter 6.27 RCW to which the wage earner
6 may be entitled.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.36 RCW
8 to read as follows:

9 The director shall adopt rules to assure an injured worker may
10 receive care from a health care provider who furnishes primary care
11 services through a direct agreement in compliance with chapter 48.150
12 RCW. Any billing rule requiring a provider to bill for services does
13 not apply to a direct practice. However, the department may require a
14 direct practice provider to comply with any other standards required to
15 provide care under this title. The department may adopt rules
16 requiring a direct practice that provides care under this title to
17 provide such information as the department requires to establish rates
18 for state fund employers and any refunds or assessments for employers
19 or groups participating in the retrospective rating plan. The
20 department may also adopt rules regarding direct practice fees to
21 assure that workers are not paying for benefits under this title, other
22 than what is permitted under RCW 51.16.140 and 51.32.073. For purposes
23 of this subsection, "direct practice" shall have the meaning in RCW
24 48.150.010.

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

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

1 any such payment or it will be deemed any claim therefor has been
2 waived.

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

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

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

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

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

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

1 rules adopted in accordance with the procedures provided in the
2 administrative procedure act, chapter 34.05 RCW, may exercise
3 discretion to waive, in whole or in part, the amount of any such
4 payments where the recovery would be against equity and good
5 conscience.

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

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

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

34 (c) If a self-insurer is not fully reimbursed within twenty-four
35 months of the first attempt at recovery through the collection process
36 pursuant to this subsection and by means of processes pursuant to
37 subsection (6) of this section, the self-insurer shall be reimbursed

1 for the remainder of the amount due from the self-insured employer
2 overpayment reimbursement fund.

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

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

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

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

25 (i) Willful false statement; or

26 (ii) Willful misrepresentation, omission, or concealment of any
27 material fact.

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

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

35 (e) For purposes of this subsection (5), a material fact is one
36 which would result in additional, increased, or continued benefits,
37 including but not limited to facts about physical restrictions, or
38 work-type activities which either result in wages or income or would be

1 reasonably expected to do so. Wages or income include the receipt of
2 any goods or services. For a work-type activity to be reasonably
3 expected to result in wages or income, a pattern of repeated activity
4 must exist. For those activities that would reasonably be expected to
5 result in wages or produce income, but for which actual wage or income
6 information cannot be reasonably determined, the department shall
7 impute wages pursuant to RCW 51.08.178(4).

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

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

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

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

4 **Sec. 7.** RCW 51.48.120 and 1995 c 160 s 5 are each amended to read
5 as follows:

6 If any employer should default in any payment due to the state fund
7 the director or the director's designee may issue a notice of
8 assessment certifying the amount due, which notice shall be served upon
9 the employer by mailing such notice to the employer by (~~certified~~
10 ~~mail~~) a method for which receipt can be confirmed or tracked to the
11 employer's last known address or served in the manner prescribed for
12 the service of a summons in a civil action. Such notice shall contain
13 the information that an appeal must be filed with the board of
14 industrial insurance appeals and the director by mail or personally
15 within thirty days of the date of service of the notice of assessment
16 in order to appeal the assessment unless a written request for
17 reconsideration is filed with the department of labor and industries.

18 **Sec. 8.** RCW 51.48.150 and 1995 c 160 s 6 are each amended to read
19 as follows:

20 The director or the director's designee is hereby authorized to
21 issue to any person, firm, corporation, municipal corporation,
22 political subdivision of the state, a public corporation, or any agency
23 of the state, a notice and order to withhold and deliver property of
24 any kind whatsoever when he or she has reason to believe that there is
25 in the possession of such person, firm, corporation, municipal
26 corporation, political subdivision of the state, public corporation, or
27 any agency of the state, property which is or shall become due, owing,
28 or belonging to any employer upon whom a notice of assessment has been
29 served by the department for payments due to the state fund. The
30 effect of a notice and order to withhold and deliver shall be
31 continuous from the date such notice and order to withhold and deliver
32 is first made until the liability out of which such notice and order to
33 withhold and deliver arose is satisfied or becomes unenforceable
34 because of lapse of time. The department shall release the notice and
35 order to withhold and deliver when the liability out of which the
36 notice and order to withhold and deliver arose is satisfied or becomes

1 unenforceable by reason of lapse of time and shall notify the person
2 against whom the notice and order to withhold and deliver was made that
3 such notice and order to withhold and deliver has been released.

4 The notice and order to withhold and deliver shall be served by the
5 sheriff of the county or by the sheriff's deputy, by (~~certified mail,~~
6 ~~return receipt requested~~) a method for which receipt can be confirmed
7 or tracked, or by any duly authorized representatives of the director.
8 Any person, firm, corporation, municipal corporation, political
9 subdivision of the state, public corporation or any agency of the state
10 upon whom service has been made is hereby required to answer the notice
11 within twenty days exclusive of the day of service, under oath and in
12 writing, and shall make true answers to the matters inquired of in the
13 notice and order to withhold and deliver. In the event there is in the
14 possession of the party named and served with a notice and order to
15 withhold and deliver, any property which may be subject to the claim of
16 the department, such property shall be delivered forthwith to the
17 director or the director's duly authorized representative upon service
18 of the notice to withhold and deliver which will be held in trust by
19 the director for application on the employer's indebtedness to the
20 department, or for return without interest, in accordance with a final
21 determination of a petition for review, or in the alternative such
22 party shall furnish a good and sufficient surety bond satisfactory to
23 the director conditioned upon final determination of liability. Should
24 any party served and named in the notice to withhold and deliver fail
25 to make answer to such notice and order to withhold and deliver, within
26 the time prescribed herein, it shall be lawful for the court, after the
27 time to answer such order has expired, to render judgment by default
28 against the party named in the notice to withhold and deliver for the
29 full amount claimed by the director in the notice to withhold and
30 deliver together with costs. In the event that a notice to withhold
31 and deliver is served upon an employer and the property found to be
32 subject thereto is wages, then the employer shall be entitled to assert
33 in the answer to all exemptions provided for by chapter 6.27 RCW to
34 which the wage earner may be entitled.

35 **Sec. 9.** RCW 51.52.050 and 2008 c 280 s 1 are each amended to read
36 as follows:

37 (1) Whenever the department has made any order, decision, or award,

1 it shall promptly serve the worker, beneficiary, employer, or other
2 person affected thereby, with a copy thereof by mail, (~~which shall be~~
3 ~~addressed to such person at his or her last known address as shown by~~
4 ~~the records of the department~~) or if the worker, beneficiary,
5 employer, or other person affected thereby chooses, the department may
6 send correspondence and other legal notices by secure electronic means
7 except for orders communicating the closure of a claim. Persons who
8 choose to receive correspondence and other legal notices electronically
9 shall be provided information to assist them in ensuring all electronic
10 documents and communications are received. Correspondence and notices
11 must be addressed to such a person at his or her last known postal or
12 electronic address as shown by the records of the department.
13 Correspondence and notices sent electronically are considered received
14 on the date sent by the department. The copy, in case the same is a
15 final order, decision, or award, shall bear on the same side of the
16 same page on which is found the amount of the award, a statement, set
17 in black faced type of at least ten point body or size, that such final
18 order, decision, or award shall become final within sixty days from the
19 date the order is communicated to the parties unless a written request
20 for reconsideration is filed with the department of labor and
21 industries, Olympia, or an appeal is filed with the board of industrial
22 insurance appeals, Olympia. However, a department order or decision
23 making demand, whether with or without penalty, for repayment of sums
24 paid to a provider of medical, dental, vocational, or other health
25 services rendered to an industrially injured worker, shall state that
26 such order or decision shall become final within twenty days from the
27 date the order or decision is communicated to the parties unless a
28 written request for reconsideration is filed with the department of
29 labor and industries, Olympia, or an appeal is filed with the board of
30 industrial insurance appeals, Olympia.

31 (2)(a) Whenever the department has taken any action or made any
32 decision relating to any phase of the administration of this title the
33 worker, beneficiary, employer, or other person aggrieved thereby may
34 request reconsideration of the department, or may appeal to the board.
35 In an appeal before the board, the appellant shall have the burden of
36 proceeding with the evidence to establish a prima facie case for the
37 relief sought in such appeal.

1 (b) An order by the department awarding benefits shall become
2 effective and benefits due on the date issued. Subject to (b)(i) and
3 (ii) of this subsection, if the department order is appealed the order
4 shall not be stayed pending a final decision on the merits unless
5 ordered by the board. Upon issuance of the order granting the appeal,
6 the board will provide the worker with notice concerning the potential
7 of an overpayment of benefits paid pending the outcome of the appeal
8 and the requirements for interest on unpaid benefits pursuant to RCW
9 51.52.135. A worker may request that benefits cease pending appeal at
10 any time following the employer's motion for stay or the board's order
11 granting appeal. The request must be submitted in writing to the
12 employer, the board, and the department. Any employer may move for a
13 stay of the order on appeal, in whole or in part. The motion must be
14 filed within fifteen days of the order granting appeal. The board
15 shall conduct an expedited review of the claim file provided by the
16 department as it existed on the date of the department order. The
17 board shall issue a final decision within twenty-five days of the
18 filing of the motion for stay or the order granting appeal, whichever
19 is later. The board's final decision may be appealed to superior court
20 in accordance with RCW 51.52.110. The board shall grant a motion to
21 stay if the moving party demonstrates that it is more likely than not
22 to prevail on the facts as they existed at the time of the order on
23 appeal. The board shall not consider the likelihood of recoupment of
24 benefits as a basis to grant or deny a motion to stay. If a
25 self-insured employer prevails on the merits, any benefits paid may be
26 recouped pursuant to RCW 51.32.240.

27 (i) If upon reconsideration requested by a worker or medical
28 provider, the department has ordered an increase in a permanent partial
29 disability award from the amount reflected in an earlier order, the
30 award reflected in the earlier order shall not be stayed pending a
31 final decision on the merits. However, the increase is stayed without
32 further action by the board pending a final decision on the merits.

33 (ii) If any party appeals an order establishing a worker's wages or
34 the compensation rate at which a worker will be paid temporary or
35 permanent total disability or loss of earning power benefits, the
36 worker shall receive payment pending a final decision on the merits
37 based on the following:

1 (A) When the employer is self-insured, the wage calculation or
2 compensation rate the employer most recently submitted to the
3 department; or

4 (B) When the employer is insured through the state fund, the
5 highest wage amount or compensation rate uncontested by the parties.

6 Payment of benefits or consideration of wages at a rate that is
7 higher than that specified in (b)(ii)(A) or (B) of this subsection is
8 stayed without further action by the board pending a final decision on
9 the merits.

10 (c) In an appeal from an order of the department that alleges
11 willful misrepresentation, the department or self-insured employer
12 shall initially introduce all evidence in its case in chief. Any such
13 person aggrieved by the decision and order of the board may thereafter
14 appeal to the superior court, as prescribed in this chapter.

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