
HOUSE BILL 1831

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Kirby, Sells, Ormsby, Ladenburg, Sullivan, Fitzgibbon, and Kenney

Read first time 02/04/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to workers' compensation payments and records;
2 amending RCW 51.32.220 and 51.48.017; adding new sections to chapter
3 51.32 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.32 RCW
6 to read as follows:

7 (1) Every self-insured employer shall maintain a place of business
8 in this state where the employer shall keep complete records of all
9 claims for compensation, administered by the employer under this
10 chapter. A self-insured employer may, under procedures established by
11 the department, keep such records in this state at places operated by
12 service companies. The records must be retained in, and may be removed
13 from, this state or disposed of, in accordance with rules established
14 by the director. Such records must be available to the director for
15 examination and audit at all reasonable times upon notice by the
16 director to the employer.

17 (2) With the permission of the director, a self-insured employer
18 may keep all claims records and process claims from a location outside
19 of the state. The director shall by rule prescribe the conditions and

1 procedure for obtaining permission of the director. At a minimum these
2 rules require that the employer shall make the files available for
3 inspection, within five days, within the state at a location requested
4 by the department, the injured worker or their beneficiary, or their
5 representatives. The expense of producing these records must be borne
6 by the employer. The director may revoke permission for failure of the
7 employer to comply with the rules. Such revocation must comply with
8 RCW 51.52.050. If the permission of an employer is revoked by the
9 director, the employer shall be allowed sixty days after the issuance
10 of the order to comply with subsection (1) of this section. The
11 expenses of examining and auditing the records of a self-insured
12 employer outside of this state must be paid by the employer.

13 (3) Notwithstanding subsection (1) of this section, a self-insured
14 employer may not have at any one time more than three locations where
15 claims are processed or records are maintained.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.32 RCW
17 to read as follows:

18 The director must assess against a self-insured employer who fails
19 to comply with section 1 of this act a penalty of five hundred dollars
20 per day for each day such failure continues. Where the failure to
21 comply is in reference to the request of an injured worker or their
22 beneficiary to inspect the file, such penalty must be awarded to the
23 injured worker or beneficiary.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.32 RCW
25 to read as follows:

26 An employer must establish proof with the director that the
27 employer:

28 (1) Has an adequate staff qualified to process claims promptly and
29 has the financial ability to make certain the prompt payment of all
30 compensation and other payments that may become due to the director
31 under this chapter.

32 (2) Where a service company is retained to administer claims on
33 behalf of a self-insured employer, the self-insured employer shall
34 demonstrate proof that the administrator the employer has retained has
35 an adequate staff qualified to process claims promptly.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.32 RCW
2 to read as follows:

3 When an employer or its representatives or agents requests a report
4 or other information in writing, or conducts an oral conversation with
5 a medical provider, the employer shall provide to the claimant a copy
6 of a written report from, or a memorandum describing any oral
7 conversation with a medical provider, within five days of the receipt
8 for the report or the communication with the medical provider,
9 whichever is shorter. This information must be provided regardless of
10 the source of the information, any claim of privilege or attorney work
11 product.

12 **Sec. 5.** RCW 51.32.220 and 2007 c 255 s 1 are each amended to read
13 as follows:

14 (1) For persons receiving compensation for temporary or permanent
15 total disability pursuant to the provisions of this chapter, such
16 compensation shall be reduced by an amount equal to the benefits
17 payable under the federal old-age, survivors, and disability insurance
18 act as now or hereafter amended not to exceed the amount of the
19 reduction established pursuant to 42 U.S.C. Sec. 424a. However, such
20 reduction shall not apply when the combined compensation provided
21 pursuant to this chapter and the federal old-age, survivors, and
22 disability insurance act is less than the total benefits to which the
23 federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any
24 person described in this section refuses to authorize the release of
25 information concerning the amount of benefits payable under said
26 federal act the department's estimate of said amount shall be deemed to
27 be correct unless and until the actual amount is established and no
28 adjustment shall be made for any period of time covered by any such
29 refusal.

30 (2) Any reduction under subsection (1) of this section shall be
31 effective the month following the month in which the department or
32 self-insurer is notified by the federal social security administration
33 that the person is receiving disability benefits under the federal old-
34 age, survivors, and disability insurance act: PROVIDED, That in the
35 event of an overpayment of benefits the department or self-insurer may
36 not recover more than the overpayments for the six months immediately
37 preceding the date the department or self-insurer notifies the worker

1 that an overpayment has occurred: PROVIDED FURTHER, That upon
2 determining that there has been an overpayment, the department or self-
3 insurer shall immediately notify the person who received the
4 overpayment that he or she shall be required to make repayment pursuant
5 to this section and RCW 51.32.230.

6 (3) Recovery of any overpayment must be taken from future temporary
7 or permanent total disability benefits or permanent partial disability
8 benefits provided by this title. In the case of temporary or permanent
9 total disability benefits, the recovery shall not exceed twenty-five
10 percent of the monthly amount due from the department or self-insurer
11 or one-sixth of the total overpayment, whichever is the lesser.

12 (4) No reduction may be made unless the worker receives notice of
13 the reduction prior to the month in which the reduction is made.

14 (5) In no event shall the reduction reduce total benefits to less
15 than the greater amount the worker may be entitled to under this title
16 or the federal old-age, survivors, and disability insurance act.

17 (6) The director, pursuant to rules adopted in accordance with the
18 procedures provided in the administrative procedure act, chapter 34.05
19 RCW, may exercise his or her discretion to waive, in whole or in part,
20 the amount of any overpayment where the recovery would be against
21 equity and good conscience.

22 (7) Subsection (1) of this section applies to:

23 (a) Workers under the age of sixty-two whose effective entitlement
24 to total disability compensation begins before January 2, 1983;

25 (b) Workers under the age of sixty-five whose effective entitlement
26 to total disability compensation begins after January 1, 1983; and

27 (c) Workers who will become sixty-five years of age on or after
28 June 10, 2004.

29 (8)(a) If the federal social security administration makes a
30 retroactive reduction in the federal social security disability benefit
31 entitlement of a worker for periods of temporary total, temporary
32 partial, or total permanent disability for which the department or
33 self-insurer also reduced the worker's benefit amounts under this
34 section, the department or self-insurer, as the case may be, shall make
35 adjustments in the calculation of benefits and pay the additional
36 benefits to the worker as appropriate. However, the department or
37 self-insurer shall not make changes in the calculation or pay
38 additional benefits unless the worker submits a written request, along

1 with documentation satisfactory to the director of an overpayment
2 assessment by the social security administration, to the department or
3 self-insurer, as the case may be.

4 (b) Additional benefits paid under this subsection:

5 (i) Are paid without interest and without regard to whether the
6 worker's claim under this title is closed; and

7 (ii) Do not affect the status or the date of the claim's closure.

8 (c) This subsection does not apply to requests on claims for which
9 a determination on the request has been made and is not subject to
10 further appeal.

11 (9) If the department or self-insured employer issues an order
12 which results in an overpayment to the claimant, the department or the
13 self-insured employer, as the case may be, must itemize each
14 overpayment which will accrue as a result of the order. Any
15 overpayment not identified in the original order is deemed waived.
16 This subsection (9) does not apply to RCW 51.32.225. The order is
17 subject to the provisions of RCW 51.52.050.

18 **Sec. 6.** RCW 51.48.017 and 2010 c 8 s 14011 are each amended to
19 read as follows:

20 (1) If a self-insurer unreasonably delays or refuses to pay
21 benefits as they become due there shall be paid by the self-insurer
22 upon order of the director an additional amount equal to five
23 ((~~hundred~~)) ~~thousand~~ thousand dollars or twenty-five percent of the amount then
24 due, whichever is greater, which shall accrue for the benefit of the
25 claimant and shall be paid to him or her with the benefits which may be
26 assessed under this title. The reasonableness of the conduct must be
27 based on the totality of circumstances.

28 (2) Benefits include, but are not limited to, total temporary
29 disability or loss of earning power benefits, authorizing of treatment
30 or payment of medical bills, reimbursement for travel or other allowed
31 expenses, and permanent partial disability benefits. Unless otherwise
32 provided in this statute, an employer is required to respond to a
33 request for information, authorization, or payment within forty-eight
34 hours of the request, regardless of whether the request is oral,
35 electronic or in writing. Failure to timely respond to a request for
36 information is a violation of this section. Failure to comply with a

1 department order, within ten days of the issuance of that order, is a
2 violation of this section.

3 (3) The director shall issue an order determining whether there was
4 an unreasonable delay or refusal to pay benefits within thirty days
5 upon the request of the claimant. Such an order shall conform to the
6 requirements of RCW 51.52.050.

7 (4) A claimant is entitled to attorneys' fees and all reasonable
8 costs incurred before the department, the board of industrial insurance
9 appeals, or any appellate court, including but not limited to, expert
10 witness fees, for establishing entitlement under this section.

--- END ---