
HOUSE BILL 1872

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By Representatives Springer, Condotta, Eddy, Clibborn, Shea, Warnick, Morris, Fagan, Taylor, and Takko

Read first time 02/07/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to workers' compensation reform through
2 clarification of occupational disease claims and authorization of
3 voluntary settlements; amending RCW 51.08.140, 51.32.180, and
4 51.28.055; adding new sections to chapter 51.04 RCW; and creating a new
5 section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that a fiscally sound
8 industrial insurance system that assures necessary and proper medical
9 care for persons injured at work is integral to the health and economic
10 well-being of workers and the economic welfare of the state. The
11 legislature further finds that reforms are needed to assure the best
12 worker outcomes, including return to work. Improvements are also
13 needed to assure the most efficient and fair system. The legislature
14 intends to make the workers' compensation system more cost-effective by
15 authorizing voluntary settlement agreements and by assuring that the
16 workers' compensation system will only be responsible for costs due to
17 workplace injuries.

1 **Sec. 2.** RCW 51.08.140 and 1961 c 23 s 51.08.140 are each amended
2 to read as follows:

3 (1) "Occupational disease" means such disease or infection as
4 arises ((naturally and proximately)) out of and in the course of the
5 particular employment under ((the mandatory or elective adoption
6 provisions of)) this title in which the worker is exposed to such
7 disease or infection and which meets all of the following criteria:

8 (a) The disease or infection is proximately caused by the
9 distinctive conditions under which the work is performed and risk of
10 exposure inherent therein;

11 (b) The disease or infection arose as a natural incident of the
12 employment-related exposure;

13 (c) The worker would not have ordinarily been exposed to the
14 disease or infection outside of his or her employment; and

15 (d) The disease or infection is not an ordinary condition of life
16 to which the general public is exposed without regard to employment.

17 (2) For the purposes of this section, "proximate cause" means that
18 cause which, in a direct sequence, unbroken by any new, independent
19 cause, produces the disease or infection, and without which the disease
20 or infection would not have occurred.

21 **Sec. 3.** RCW 51.32.180 and 1988 c 161 s 5 are each amended to read
22 as follows:

23 Every worker who suffers disability from an occupational disease
24 arising out of and in the course of employment under the mandatory or
25 elective adoption provisions of this title, or his or her family and
26 dependents in case of death of the worker from such disease or
27 infection, shall receive the same compensation benefits and medical,
28 surgical and hospital care and treatment as would be paid and provided
29 for a worker injured or killed in employment under this title, except
30 as follows: ~~((a)-(1))~~ (1) This section and RCW 51.16.040 shall not
31 apply where the last exposure to the hazards of the disease or
32 infection occurred prior to January 1, 1937; and ~~((b)-(2))~~ (2) for
33 claims filed on or after July 1, 1988, the rate of compensation for
34 occupational diseases shall be established as of the date the disease
35 requires medical treatment or becomes totally or partially disabling,
36 whichever occurs first, and without regard to the date of the
37 contraction of the disease or the date of filing the claim.

1 **Sec. 4.** RCW 51.28.055 and 2004 c 65 s 7 are each amended to read
2 as follows:

3 (1) (~~Except as provided in subsection (2) of this section for~~
4 ~~claims filed for occupational hearing loss, claims for occupational~~
5 ~~disease or infection to be valid and compensable must be filed within~~
6 ~~two years following the date the worker had written notice from a~~
7 ~~physician or a licensed advanced registered nurse practitioner: (a) Of~~
8 ~~the existence of his or her occupational disease, and (b) that a claim~~
9 ~~for disability benefits may be filed. The notice shall also contain a~~
10 ~~statement that the worker has two years from the date of the notice to~~
11 ~~file a claim. The physician or licensed advanced registered nurse~~
12 ~~practitioner shall file the notice with the department. The department~~
13 ~~shall send a copy to the worker and to the self-insurer if the worker's~~
14 ~~employer is self-insured. However, a claim is valid if it is filed~~
15 ~~within two years from the date of death of the worker suffering from an~~
16 ~~occupational disease.)) To be valid and compensable, claims for
17 occupational disease or infection must be filed within one year
18 following the earliest of the following dates:~~

19 (a) The date the disease or infection was first diagnosed;

20 (b) The date the worker first received treatment for symptoms of
21 the disease or infection from any health services provider; or

22 (c) The date the worker was first partially or fully restricted
23 from work due to the disease or infection.

24 (2)(a) Except as provided in (b) of this subsection, to be valid
25 and compensable, claims for hearing loss due to occupational noise
26 exposure must be filed within two years of the date of the worker's
27 last injurious exposure to occupational noise in employment covered
28 under this title (~~or within one year of September 10, 2003, whichever~~
29 ~~is later)).~~

30 (b) A claim for hearing loss due to occupational noise exposure
31 that is not timely filed under (a) of this subsection can only be
32 allowed for medical aid benefits under chapter 51.36 RCW. A claim for
33 hearing loss due to occupational noise exposure that is not timely
34 filed under subsection (1) of this section is not valid, and is not
35 allowed for any benefits under this title.

36 (3) The department may adopt rules to implement this section.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.04 RCW
2 to read as follows:

3 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of this
4 title, the parties to a claim for benefits may enter into a voluntary
5 settlement agreement at any time as provided in this section with
6 respect to one or more claims for benefits under this title. All
7 voluntary settlement agreements must be approved by the board of
8 industrial insurance appeals. The voluntary settlement agreement may:

9 (i) Bind the parties with regard to any or all aspects of a claim
10 including, but not limited to, allowance or rejection of a claim,
11 monetary payment, vocational services, claim closure, and claim
12 reopening under RCW 51.32.160; and

13 (ii) Not subject any employer who is not a signatory to the
14 agreement to any responsibility or burden under any claim.

15 (b) For purposes of this section, "parties" means:

16 (i) For a self-insured claim, the worker and the employer; and

17 (ii) For a state fund claim, the worker, the employer, and the
18 department. If the employer participates in a retrospective rating
19 plan under chapter 51.18 RCW, the retrospective rating group, through
20 its administrator, is also a party.

21 (c) A voluntary settlement agreement entered into under this
22 section must be signed by the parties or their representatives and must
23 clearly state that the parties understand and agree to the terms of the
24 voluntary settlement agreement. Unless one of the parties revokes
25 consent to the agreement, as provided in subsection (3) of this
26 section, the voluntary settlement agreement becomes final and binding
27 thirty days after approval of the agreement by the board of industrial
28 insurance appeals.

29 (d) A voluntary settlement agreement that has become final and
30 binding as provided in this section is binding on the department and on
31 all parties to the agreement as to its terms and the injuries and
32 occupational diseases to which the voluntary settlement applies. A
33 voluntary settlement agreement that has become final and binding is not
34 subject to appeal.

35 (2)(a) If a worker is not represented by an attorney at the time of
36 signing a voluntary settlement agreement, the parties must forward a
37 copy of the signed settlement agreement to the board with a request for
38 a conference with a settlement officer. Unless one of the parties

1 requests a later date, the settlement officer must convene a conference
2 within fourteen days after receipt of the request for the limited
3 purpose of receiving the voluntary settlement agreement of the parties,
4 explaining to the worker the benefits generally available under this
5 title, and explaining that a voluntary settlement agreement may alter
6 the benefits payable on a claim. In no event may a settlement officer
7 render legal advice to any party.

8 (b) Before approving the settlement agreement, the settlement
9 officer shall ensure that the worker has an adequate understanding of
10 the settlement proposal and its consequences to the worker.

11 (c) The settlement officer may reject a settlement agreement only
12 if the officer finds the parties have not entered into the agreement
13 knowingly and willingly. Within seven days after the conference, the
14 settlement officer shall issue an order allowing or rejecting the
15 voluntary settlement agreement. There is no appeal from the settlement
16 officer's decision.

17 (d) If the settlement officer issues an order allowing the
18 voluntary settlement agreement, the order must be submitted to the
19 board.

20 (3) If a worker is represented by an attorney at the time of
21 signing a voluntary settlement agreement, the parties may submit the
22 agreement directly to the board without the conference described in
23 this section.

24 (4) Upon receiving the voluntary settlement agreement, the board
25 shall approve the agreement within thirty working days of receipt
26 unless it finds that the parties have not entered into the agreement
27 knowingly and willingly. If the board approves the agreement, it shall
28 provide notice to the department of the binding terms of the agreement
29 and provide for placement of the agreement in the applicable claim
30 files.

31 (5) A party may revoke consent to the voluntary settlement
32 agreement by providing written notice to the other parties and the
33 board within thirty days after the date the agreement is approved by
34 the board.

35 (6) To the extent the worker is found to be entitled to temporary
36 total disability or permanent total disability benefits while a
37 voluntary settlement agreement is being negotiated, or during the

1 revocation period of an agreement, the benefits must be paid until the
2 agreement becomes final.

3 (7) If the parties have provided in a voluntary settlement
4 agreement that a claim is not subject to reopening under RCW 51.32.160,
5 any application to reopen the claim must be denied.

6 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.04 RCW
7 to read as follows:

8 The department must maintain copies of all voluntary settlement
9 agreements entered into between the parties and develop processes under
10 RCW 51.28.070 to furnish copies of such agreements to any party
11 contemplating any subsequent voluntary settlement agreement with the
12 worker on any claim. The department shall also furnish claims
13 histories that include all prior permanent disability awards received
14 by the worker on any claims by body part and category or percentage
15 rating, as applicable. Copies of such agreements and claims histories
16 shall be furnished within ten working days of a written request. An
17 employer may not consider a prior settlement agreement or claims
18 history when making a decision about hiring or the terms or conditions
19 of employment.

20 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.04 RCW
21 to read as follows:

22 If a worker has received a prior award of, or entered into a
23 voluntary settlement for, total or partial permanent disability
24 benefits, it shall be conclusively presumed that the medical condition
25 causing the prior permanent disability exists and is disabling at the
26 time of any subsequent industrial injury or occupational disease.
27 Except in the case of total permanent disability, the accumulation of
28 all permanent disability awards issued with respect to any one part of
29 the body in favor of the worker may not exceed one hundred percent over
30 the worker's lifetime. When entering into a voluntary settlement
31 agreement under this chapter, the department or self-insured employer
32 may exclude amounts paid to settle claims for prior portions of a
33 worker's permanent total or partial disability.

34 NEW SECTION. **Sec. 8.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

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