
HOUSE BILL 1964

State of Washington 62nd Legislature 2011 Regular Session

By Representatives Condotta, Chandler, Shea, Taylor, Fagan, and Bailey

Read first time 02/15/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to simplifying and adding certainty to the
2 calculation of workers' compensation benefits; amending RCW 51.32.050
3 and 51.32.060; reenacting and amending RCW 51.32.090; adding a new
4 section to chapter 51.08 RCW; repealing RCW 51.08.178; providing an
5 effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08 RCW
8 to read as follows:

9 (1) If a worker is injured in an employment that both the worker
10 and the particular employer intend to be permanent and lasting into the
11 foreseeable future, the worker's monthly wage shall be determined by
12 dividing by twelve the total wages earned from the particular
13 employment and any other concurrent employment, including cash bonuses
14 and overtime, in the twelve months immediately preceding the date of
15 injury or manifestation of occupational disease. If the worker has
16 worked less than twelve months for the particular employer in whose
17 employment the worker was injured or manifested the occupational
18 disease, the monthly wage shall be based on the total wages earned by

1 the worker in the employment, divided by the total number of months the
2 worker actually worked in the employment.

3 (2) If a worker is injured in an employment that either the worker
4 or the particular employer intends to be temporary and not lasting into
5 the foreseeable future, the worker's monthly wage shall be determined
6 by dividing by twelve the total wages earned from all employment,
7 including cash bonuses and overtime, in the twelve months immediately
8 preceding the date of injury or manifestation of occupational disease.

9 (3) "Wages" means the gross monetary remuneration for services
10 performed with respect to a pay period, paid in cash, by check, by
11 electronic transfer, or by other means directly to the worker or to an
12 account designated by the worker. Wages shall include the actual value
13 of board, housing, and fuel received from the employer as part of the
14 contract for hire. Tips shall be included to the extent that such are
15 reported to the employer for federal income tax purposes. Wages shall
16 not include health and welfare benefits, savings matching programs, or
17 fringe benefits including, but not limited to, retirement and financial
18 benefit plans of whatever nature; life, disability, and wage-
19 replacement insurance of whatever nature; unused accrued leave of
20 whatever nature; memberships of any kind; employee discounts or use or
21 consumption of employer services, material, equipment, and facilities
22 of whatever nature; training and education of whatever nature; and
23 other employee or beneficiary benefit plan for the employee's or
24 beneficiaries' benefit resulting from the employment relationship.

25 **Sec. 2.** RCW 51.32.050 and 2010 c 261 s 3 are each amended to read
26 as follows:

27 (1) Where death results from the injury the expenses of burial not
28 to exceed two hundred percent of the average monthly wage in the state
29 as defined in RCW 51.08.018 shall be paid.

30 (2)(a)(i) For claims with date of injury or manifestation of
31 occupational disease before July 1, 2011, where death results from the
32 injury, a surviving spouse of a deceased worker eligible for benefits
33 under this title shall receive monthly for life or until remarriage
34 payments according to the following schedule:

35 ~~((+i))~~ (A) If there are no children of the deceased worker, sixty
36 percent of the wages of the deceased worker;

1 ~~((+ii))~~ (B) If there is one child of the deceased worker and in
2 the legal custody of such spouse, sixty-two percent of the wages of the
3 deceased worker;

4 ~~((+iii))~~ (C) If there are two children of the deceased worker and
5 in the legal custody of such spouse, sixty-four percent of the wages of
6 the deceased worker;

7 ~~((+iv))~~ (D) If there are three children of the deceased worker and
8 in the legal custody of such spouse, sixty-six percent of the wages of
9 the deceased worker;

10 ~~((+v))~~ (E) If there are four children of the deceased worker and
11 in the legal custody of such spouse, sixty-eight percent of the wages
12 of the deceased worker; or

13 ~~((+vi))~~ (F) If there are five or more children of the deceased
14 worker and in the legal custody of such spouse, seventy percent of the
15 wages of the deceased worker.

16 (ii) For claims with date of injury or manifestation of
17 occupational disease on or after July 1, 2011, where death results from
18 the injury, a surviving spouse of a deceased worker eligible for
19 benefits under this title shall receive monthly for life or until
20 remarriage payments of sixty-six and two-thirds percent of the wages of
21 the deceased worker.

22 (b) Where the surviving spouse does not have legal custody of any
23 child or children of the deceased worker or where after the death of
24 the worker legal custody of such child or children passes from such
25 surviving spouse to another, any payment on account of such child or
26 children not in the legal custody of the surviving spouse shall be made
27 to the person or persons having legal custody of such child or
28 children. The amount of such payments shall be five percent of the
29 monthly benefits payable as a result of the worker's death for each
30 such child but such payments shall not exceed twenty-five percent.
31 Such payments on account of such child or children shall be subtracted
32 from the amount to which such surviving spouse would have been entitled
33 had such surviving spouse had legal custody of all of the children and
34 the surviving spouse shall receive the remainder after such payments on
35 account of such child or children have been subtracted. Such payments
36 on account of a child or children not in the legal custody of such
37 surviving spouse shall be apportioned equally among such children.

1 (c) Payments to the surviving spouse of the deceased worker shall
2 cease at the end of the month in which remarriage occurs: PROVIDED,
3 That a monthly payment shall be made to the child or children of the
4 deceased worker from the month following such remarriage in a sum equal
5 to five percent of the wages of the deceased worker for one child and
6 a sum equal to five percent for each additional child up to a maximum
7 of five such children. Payments to such child or children shall be
8 apportioned equally among such children. Such sum shall be in place of
9 any payments theretofore made for the benefit of or on account of any
10 such child or children. If the surviving spouse does not have legal
11 custody of any child or children of the deceased worker, or if after
12 the death of the worker, legal custody of such child or children passes
13 from such surviving spouse to another, any payment on account of such
14 child or children not in the legal custody of the surviving spouse
15 shall be made to the person or persons having legal custody of such
16 child or children.

17 (d) In no event shall the monthly payments provided in subsection
18 (2) of this section:

19 (i) Exceed the applicable percentage of the average monthly wage in
20 the state as computed under RCW 51.08.018 as follows:

21	AFTER	PERCENTAGE
22	June 30, 1993	105%
23	June 30, 1994	110%
24	June 30, 1995	115%
25	June 30, 1996	120%
26	<u>June 30, 2011</u>	<u>100%</u>

27 (ii) For dates of injury or disease manifestation after July 1,
28 2008, be less than fifteen percent of the average monthly wage in the
29 state as computed under RCW 51.08.018 plus an additional ten dollars
30 per month for a surviving spouse and an additional ten dollars per
31 month for each child of the worker up to a maximum of five children.
32 However, if the monthly payment computed under this subsection
33 (2)(d)(ii) is greater than one hundred percent of the wages of the
34 deceased worker as determined under (~~RCW 51.08.178~~) section 1 of this

1 act, the monthly payment due to the surviving spouse shall be equal to
2 the greater of the monthly wages of the deceased worker or the minimum
3 benefit set forth in this section on June 30, 2008.

4 (e) In addition to the monthly payments provided for in subsection
5 (2)(a) through (c) of this section, a surviving spouse or child or
6 children of such worker if there is no surviving spouse, or dependent
7 parent or parents, if there is no surviving spouse or child or children
8 of any such deceased worker shall be forthwith paid a sum equal to one
9 hundred percent of the average monthly wage in the state as defined in
10 RCW 51.08.018, any such children, or parents to share and share alike
11 in said sum.

12 (f) Upon remarriage of a surviving spouse the monthly payments for
13 the child or children shall continue as provided in this section, but
14 the monthly payments to such surviving spouse shall cease at the end of
15 the month during which remarriage occurs. However, after September 8,
16 1975, an otherwise eligible surviving spouse of a worker who died at
17 any time prior to or after September 8, 1975, shall have an option of:

18 (i)(A) Receiving, once and for all, a lump sum of twenty-four times
19 the monthly compensation rate in effect on the date of remarriage
20 allocable to the spouse for himself or herself pursuant to subsection
21 (2)(a)(i)(A) of this section and subject to any modifications specified
22 under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty
23 percent of the then remaining annuity value of his or her pension,
24 whichever is the lesser: PROVIDED, That if the injury occurred prior
25 to July 28, 1991, the remarriage benefit lump sum available shall be as
26 provided in the remarriage benefit schedules then in effect;

27 (B) If a surviving spouse is the surviving spouse of a member of
28 the law enforcement officers' and firefighters' retirement system under
29 chapter 41.26 RCW or the state patrol retirement system under chapter
30 43.43 RCW, the surviving spouse may receive a lump sum of thirty-six
31 times the monthly compensation rate in effect on the date of remarriage
32 allocable to the spouse for himself or herself pursuant to subsection
33 (2)(a)(i)(A) of this section and RCW 51.32.075(3) or fifty percent of
34 the remaining annuity value of his or her pension provided under this
35 chapter, whichever is the lesser: PROVIDED, That if the injury
36 occurred prior to July 28, 1991, the lump sum benefit shall be as
37 provided in the remarriage benefit schedules then in effect; or

1 (ii) If a surviving spouse does not choose the option specified in
2 subsection (2)(f)(i) of this section to accept the lump sum payment,
3 the remarriage of the surviving spouse of a worker shall not bar him or
4 her from claiming the lump sum payment authorized in subsection
5 (2)(f)(i) of this section during the life of the remarriage, or shall
6 not prevent subsequent monthly payments to him or to her if the
7 remarriage has been terminated by death or has been dissolved or
8 annulled by valid court decree provided he or she has not previously
9 accepted the lump sum payment.

10 (g) If the surviving spouse during the remarriage should die
11 without having previously received the lump sum payment provided in
12 subsection (2)(f)(i) of this section, his or her estate shall be
13 entitled to receive the sum specified under subsection (2)(f)(i) of
14 this section or fifty percent of the then remaining annuity value of
15 his or her pension whichever is the lesser.

16 (h) The effective date of resumption of payments under subsection
17 (2)(f)(ii) of this section to a surviving spouse based upon termination
18 of a remarriage by death, annulment, or dissolution shall be the date
19 of the death or the date the judicial decree of annulment or
20 dissolution becomes final and when application for the payments has
21 been received.

22 (i) If it should be necessary to increase the reserves in the
23 reserve fund or to create a new pension reserve fund as a result of the
24 amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of
25 such increase in pension reserve in any such case shall be transferred
26 to the reserve fund from the supplemental pension fund.

27 (3) If there is a child or children and no surviving spouse of the
28 deceased worker or the surviving spouse is not eligible for benefits
29 under this title, a sum equal to thirty-five percent of the wages of
30 the deceased worker shall be paid monthly for one child and a sum
31 equivalent to fifteen percent of such wage shall be paid monthly for
32 each additional child, the total of such sum to be divided among such
33 children, share and share alike: PROVIDED, That benefits under this
34 subsection or subsection (4) of this section shall not exceed the
35 lesser of sixty-five percent of the wages of the deceased worker at the
36 time of his or her death or the applicable percentage of the average
37 monthly wage in the state as defined in RCW 51.08.018, as follows:

	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%
6	<u>June 30, 2011</u>	<u>100%</u>

7 (4) In the event a surviving spouse receiving monthly payments
8 dies, the child or children of the deceased worker shall receive the
9 same payment as provided in subsection (3) of this section.

10 (5) If the worker leaves no surviving spouse or child, but leaves
11 a dependent or dependents, a monthly payment shall be made to each
12 dependent equal to fifty percent of the average monthly support
13 actually received by such dependent from the worker during the twelve
14 months next preceding the occurrence of the injury, but the total
15 payment to all dependents in any case shall not exceed the lesser of
16 sixty-five percent of the wages of the deceased worker at the time of
17 his or her death or the applicable percentage of the average monthly
18 wage in the state as defined in RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
19		
20	June 30, 1993	105%
21	June 30, 1994	110%
22	June 30, 1995	115%
23	June 30, 1996	120%
24	<u>June 30, 2011</u>	<u>100%</u>

25 If any dependent is under the age of eighteen years at the time of
26 the occurrence of the injury, the payment to such dependent shall cease
27 when such dependent reaches the age of eighteen years except such
28 payments shall continue until the dependent reaches age twenty-three
29 while permanently enrolled at a full time course in an accredited
30 school. The payment to any dependent shall cease if and when, under
31 the same circumstances, the necessity creating the dependency would
32 have ceased if the injury had not happened.

1 (6) For claims filed prior to July 1, 1986, if the injured worker
2 dies during the period of permanent total disability, whatever the
3 cause of death, leaving a surviving spouse, or child, or children, the
4 surviving spouse or child or children shall receive benefits as if
5 death resulted from the injury as provided in subsections (2) through
6 (4) of this section. Upon remarriage or death of such surviving
7 spouse, the payments to such child or children shall be made as
8 provided in subsection (2) of this section when the surviving spouse of
9 a deceased worker remarries.

10 (7) For claims filed on or after July 1, 1986, every worker who
11 becomes eligible for permanent total disability benefits shall elect an
12 option as provided in RCW 51.32.067.

13 **Sec. 3.** RCW 51.32.060 and 2007 c 284 s 2 are each amended to read
14 as follows:

15 (1) Except as provided in subsection (2) of this section, when the
16 supervisor of industrial insurance shall determine that permanent total
17 disability results from the injury, the worker shall receive monthly
18 during the period of such disability:

19 (a) If married at the time of injury, sixty-five percent of his or
20 her wages.

21 (b) If married with one child at the time of injury, sixty-seven
22 percent of his or her wages.

23 (c) If married with two children at the time of injury, sixty-nine
24 percent of his or her wages.

25 (d) If married with three children at the time of injury,
26 seventy-one percent of his or her wages.

27 (e) If married with four children at the time of injury,
28 seventy-three percent of his or her wages.

29 (f) If married with five or more children at the time of injury,
30 seventy-five percent of his or her wages.

31 (g) If unmarried at the time of the injury, sixty percent of his or
32 her wages.

33 (h) If unmarried with one child at the time of injury, sixty-two
34 percent of his or her wages.

35 (i) If unmarried with two children at the time of injury,
36 sixty-four percent of his or her wages.

1 (j) If unmarried with three children at the time of injury,
2 sixty-six percent of his or her wages.

3 (k) If unmarried with four children at the time of injury,
4 sixty-eight percent of his or her wages.

5 (l) If unmarried with five or more children at the time of injury,
6 seventy percent of his or her wages.

7 (2) For any claim with date of injury or manifestation of
8 occupational disease on or after July 1, 2011, when the supervisor of
9 industrial insurance determines that permanent total disability results
10 from the injury, the worker shall receive monthly during the period of
11 such disability sixty-six and two-thirds percent of his or her wages as
12 determined under section 1 of this act, but not less than two hundred
13 seventy-six dollars per month.

14 (3) For any period of time where both husband and wife are entitled
15 to compensation as temporarily or totally disabled workers, only that
16 spouse having the higher wages of the two shall be entitled to claim
17 their child or children for compensation purposes under subsection (1)
18 of this section.

19 ((+3)) (4) In case of permanent total disability, if the character
20 of the injury is such as to render the worker so physically helpless as
21 to require the hiring of the services of an attendant, the department
22 shall make monthly payments to such attendant for such services as long
23 as such requirement continues, but such payments shall not obtain or be
24 operative while the worker is receiving care under or pursuant to the
25 provisions of chapter 51.36 RCW and RCW 51.04.105.

26 ((+4)) (5) Should any further accident result in the permanent
27 total disability of an injured worker, he or she shall receive the
28 pension to which he or she would be entitled, notwithstanding the
29 payment of a lump sum for his or her prior injury.

30 ((+5)) (6) In no event shall the monthly payments provided in this
31 section:

32 (a) Exceed the applicable percentage of the average monthly wage in
33 the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

1	June 30, 1995	115%
2	June 30, 1996	120%
3	<u>June 30, 2011</u>	<u>100%</u>

4 (b) For dates of injury or disease manifestation after July 1,
5 2008, but before June 30, 2011, be less than fifteen percent of the
6 average monthly wage in the state as computed under RCW 51.08.018 plus
7 an additional ten dollars per month if a worker is married and an
8 additional ten dollars per month for each child of the worker up to a
9 maximum of five children. However, if the monthly payment computed
10 under this subsection ~~((+5))~~ (6)(b) is greater than one hundred
11 percent of the wages of the worker as determined under ~~((RCW~~
12 ~~51.08.178))~~ section 1 of this act, the monthly payment due to the
13 worker shall be equal to the greater of the monthly wages of the worker
14 or the minimum benefit set forth in this section on June 30, 2008.

15 The limitations under this subsection shall not apply to the
16 payments provided for in subsection ~~((+3))~~ (4) of this section.

17 ~~((+6))~~ (7) In the case of new or reopened claims, if the
18 supervisor of industrial insurance determines that, at the time of
19 filing or reopening, the worker is voluntarily retired and is no longer
20 attached to the workforce, benefits shall not be paid under this
21 section.

22 ~~((+7))~~ (8) The benefits provided by this section are subject to
23 modification under RCW 51.32.067.

24 **Sec. 4.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
25 each reenacted and amended to read as follows:

26 (1) When the total disability is only temporary, the schedule of
27 payments contained in RCW 51.32.060 (1) and ~~((+2))~~ (3) shall apply, so
28 long as the total disability continues.

29 (2) Any compensation payable under this section for children not in
30 the custody of the injured worker as of the date of injury shall be
31 payable only to such person as actually is providing the support for
32 such child or children pursuant to the order of a court of record
33 providing for support of such child or children. This subsection does
34 not apply to claims filed on or after July 1, 2011.

35 (3)(a) As soon as recovery is so complete that the present earning
36 power of the worker, at any kind of work, is restored to that existing

1 at the time of the occurrence of the injury, the payments shall cease.
2 If and so long as the present earning power is only partially restored
3 and the worker is working, the payments shall:

4 (i) For claims for injuries that occurred before May 7, 1993,
5 continue in the proportion which the new earning power shall bear to
6 the old; or

7 (ii) For claims for injuries occurring on or after May 7, 1993,
8 equal eighty percent of the actual difference between the worker's
9 present wages and earning power at the time of injury, but: (A) The
10 total of these payments and the worker's present wages may not exceed
11 one hundred fifty percent of the average monthly wage in the state as
12 computed under RCW 51.08.018; (B) the payments may not exceed one
13 hundred percent of the entitlement as computed under subsection (1) of
14 this section; and (C) the payments may not be less than the worker
15 would have received if (a)(i) of this subsection had been applicable to
16 the worker's claim.

17 (b) No compensation shall be payable under this subsection (3)
18 unless the loss of earning power shall exceed five percent.

19 (c) The prior closure of the claim or the receipt of permanent
20 partial disability benefits shall not affect the rate at which loss of
21 earning power benefits are calculated upon reopening the claim.

22 (d) The injured worker remains eligible for the benefits provided
23 in this subsection only until the injured worker's condition is
24 medically fixed and stable.

25 (4)(a) Whenever the employer of injury requests that a worker who
26 is entitled to temporary total disability under this chapter be
27 certified by a physician or licensed advanced registered nurse
28 practitioner as able to perform available work other than his or her
29 usual work, the employer shall furnish to the physician or licensed
30 advanced registered nurse practitioner, with a copy to the worker, a
31 statement describing the work available with the employer of injury in
32 terms that will enable the physician or licensed advanced registered
33 nurse practitioner to relate the physical activities of the job to the
34 worker's disability. The physician or licensed advanced registered
35 nurse practitioner shall then determine whether the worker is
36 physically able to perform the work described. The worker's temporary
37 total disability payments shall continue until the worker is released
38 by his or her physician or licensed advanced registered nurse

1 practitioner for the work, and begins the work with the employer of
2 injury. If the work thereafter comes to an end before the worker's
3 recovery is sufficient in the judgment of his or her physician or
4 licensed advanced registered nurse practitioner to permit him or her to
5 return to his or her usual job, or to perform other available work
6 offered by the employer of injury, the worker's temporary total
7 disability payments shall be resumed. Should the available work
8 described, once undertaken by the worker, impede his or her recovery to
9 the extent that in the judgment of his or her physician or licensed
10 advanced registered nurse practitioner he or she should not continue to
11 work, the worker's temporary total disability payments shall be resumed
12 when the worker ceases such work.

13 (b) Once the worker returns to work under the terms of this
14 subsection (4), he or she shall not be assigned by the employer to work
15 other than the available work described without the worker's written
16 consent, or without prior review and approval by the worker's physician
17 or licensed advanced registered nurse practitioner.

18 (c) If the worker returns to work under this subsection (4), any
19 employee health and welfare benefits that the worker was receiving at
20 the time of injury shall continue or be resumed at the level provided
21 at the time of injury. Such benefits shall not be continued or resumed
22 if to do so is inconsistent with the terms of the benefit program, or
23 with the terms of the collective bargaining agreement currently in
24 force.

25 (d) In the event of any dispute as to the worker's ability to
26 perform the available work offered by the employer, the department
27 shall make the final determination.

28 (5) No worker shall receive compensation for or during the day on
29 which injury was received or the three days following the same, unless
30 his or her disability shall continue for a period of fourteen
31 consecutive calendar days from date of injury: PROVIDED, That attempts
32 to return to work in the first fourteen days following the injury shall
33 not serve to break the continuity of the period of disability if the
34 disability continues fourteen days after the injury occurs.

35 (6) Should a worker suffer a temporary total disability and should
36 his or her employer at the time of the injury continue to pay him or
37 her the wages which he or she was earning at the time of such injury,
38 such injured worker shall not receive any payment provided in

1 subsection (1) or (2) of this section during the period his or her
2 employer shall so pay such wages: PROVIDED, That holiday pay, vacation
3 pay, sick leave, or other similar benefits shall not be deemed to be
4 payments by the employer for the purposes of this subsection.

5 (7) In no event shall the monthly payments provided in this
6 section:

7 (a) Exceed the applicable percentage of the average monthly wage in
8 the state as computed under the provisions of RCW 51.08.018 as follows:

9	AFTER	PERCENTAGE
10	June 30, 1993	105%
11	June 30, 1994	110%
12	June 30, 1995	115%
13	June 30, 1996	120%
14	<u>June 30, 2011</u>	<u>100%</u>

15 (b) For dates of injury or disease manifestation after July 1,
16 2008, be less than fifteen percent of the average monthly wage in the
17 state as computed under RCW 51.08.018 plus an additional ten dollars
18 per month if the worker is married and an additional ten dollars per
19 month for each child of the worker up to a maximum of five children.
20 However, if the monthly payment computed under this subsection (7)(b)
21 is greater than one hundred percent of the wages of the worker as
22 determined under (~~RCW 51.08.178~~) section 1 of this act, the monthly
23 payment due to the worker shall be equal to the greater of the monthly
24 wages of the worker or the minimum benefit set forth in this section on
25 June 30, 2008.

26 (8) If the supervisor of industrial insurance determines that the
27 worker is voluntarily retired and is no longer attached to the
28 workforce, benefits shall not be paid under this section.

29 NEW SECTION. Sec. 5. RCW 51.08.178 ("Wages"--Monthly wages as
30 basis of compensation--Computation thereof) and 2007 c 297 s 1, 1988 c
31 161 s 12, & 1980 c 14 s 5 are each repealed.

32 NEW SECTION. Sec. 6. This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 July 1, 2011.

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