
HOUSE BILL 2108

State of Washington 62nd Legislature 2011 1st Special Session

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1 AN ACT Relating to workers' compensation reform through
2 authorization of voluntary settlements and creation of a return-to-work
3 subsidy program; reenacting and amending RCW 51.32.090; adding new
4 sections to chapter 51.04 RCW; and creating new sections.

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

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

8 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of this
9 title, beginning January 1, 2012, the parties to an allowed claim for
10 benefits may enter into a voluntary settlement agreement as provided in
11 this section with respect to one or more allowed claims for benefits
12 under this title. No voluntary settlement agreement may be entered
13 into by a worker who has received a permanent total disability award
14 and the award is final and binding. All voluntary settlement
15 agreements must be approved by the board of industrial insurance
16 appeals. The voluntary settlement agreement may:

17 (i) Bind the parties with regard to any or all aspects of an
18 allowed claim including, but not limited to, monetary payment,
19 vocational services, and claim closure, but excluding medical benefits;

1 (ii) Include a structured settlement in which payments are made
2 pursuant to a payment schedule;

3 (iii) Not subject any employer who is not a signatory to the
4 agreement to any responsibility or burden under any claim; and

5 (iv) Not be submitted to the board under subsection (2) or (3) of
6 this section within one hundred eighty days of the date the claim is
7 allowed.

8 (b) For purposes of this section:

9 (i) "Parties" means:

10 (A) For a self-insured claim, the worker and the employer; and

11 (B) For a state fund claim, the worker, the employer, and the
12 department. However, a "party" for a state fund claim does not include
13 an employer whose experience rating would not be affected by a
14 voluntary settlement agreement or an employer whose account with the
15 department is closed or inactive.

16 (ii) "Allowed claim" means a claim for which the determination that
17 the claim is allowed is final and binding.

18 (c) For state fund claims, the department shall negotiate the
19 settlement with the worker. Any voluntary settlement agreement entered
20 into under this section must be signed by the parties or their
21 representatives and must clearly state that the parties understand and
22 agree to the terms of the voluntary settlement agreement. Unless one
23 of the parties revokes consent to the agreement, as provided in
24 subsection (5) of this section, the voluntary settlement agreement
25 becomes final and binding thirty days after approval of the agreement
26 by the board of industrial insurance appeals.

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

33 (2)(a) If a worker is not represented by an attorney at the time of
34 signing a voluntary settlement agreement, the parties must forward a
35 copy of the signed settlement agreement to the board with a request for
36 a hearing before an industrial appeals judge. The hearing must be
37 open, under oath, and on the record. Unless one of the parties
38 requests a later date, the industrial appeals judge must convene the

1 hearing within fourteen days after receipt of the request for the
2 limited purpose of receiving the voluntary settlement agreement of the
3 parties, explaining to the worker the benefits generally available
4 under this title, and explaining that a voluntary settlement agreement
5 may alter the benefits payable on a claim. In no event may an
6 industrial appeals judge render legal advice to any party.

7 (b) Before recommending approval of the voluntary settlement
8 agreement, the industrial appeals judge must find that the worker has
9 an adequate understanding of the settlement proposal and its
10 consequences to the worker.

11 (c)(i) The industrial appeals judge may recommend approval of a
12 settlement agreement only if the judge finds that the settlement is in
13 the best interest of the worker. When determining whether the
14 settlement is in the best interest of the worker, the industrial
15 appeals judge shall consider the following factors, taken as a whole,
16 with no individual factor being determinative:

17 (A) The nature and extent of the injuries and disabilities of the
18 worker;

19 (B) The age and life expectancy of the injured worker;

20 (C) Whether the injured worker has any health, disability, or
21 related insurance;

22 (D) Any other benefits the injured worker is receiving or is
23 entitled to receive and the effect a settlement agreement might have on
24 those benefits;

25 (E) The marital status of the injured worker; and

26 (F) The number of dependents of the injured worker.

27 (ii) At the conclusion of the hearing, the industrial appeals judge
28 must make a decision whether to recommend that the board approve or
29 reject the voluntary settlement agreement. The industrial appeals
30 judge may continue the hearing for up to seven days.

31 (d) If the industrial appeals judge recommends the voluntary
32 settlement agreement be approved, the recommendation must be submitted
33 to the board for final approval.

34 (3) If a worker is represented by an attorney at the time of
35 signing a voluntary settlement agreement, the parties may submit the
36 agreement directly to the board without the hearing described in this
37 section.

1 (4) Upon receiving the voluntary settlement agreement, the board
2 shall approve the agreement within thirty working days of receipt
3 unless it finds that the parties have not entered into the agreement
4 knowingly and willingly. If the board approves the agreement, it shall
5 provide notice to the department of the binding terms of the agreement
6 and provide for placement of the agreement in the applicable claim
7 files.

8 (5) A party may revoke consent to the voluntary settlement
9 agreement by providing written notice to the other parties and the
10 board within thirty days after the date the agreement is approved by
11 the board.

12 (6) To the extent the worker is found to be entitled to benefits
13 while a voluntary settlement agreement is being negotiated, or during
14 the revocation period of an agreement, the benefits must continue until
15 the agreement becomes final.

16 (7) Existing law as set forth in RCW 51.52.120 and the principles
17 and factors therein apply to attorney fees, including the limits on
18 fees, for an attorney representing a worker who enters a voluntary
19 settlement agreement.

20 (8) The board of industrial insurance appeals shall adopt rules to
21 implement this section.

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

24 The department must maintain copies of all voluntary settlement
25 agreements entered into between the parties under section 1 of this act
26 and develop processes under RCW 51.28.070 to furnish copies of such
27 agreements to any party contemplating any subsequent voluntary
28 settlement agreement with the worker on any claim. The department
29 shall also furnish claims histories that include all prior permanent
30 disability awards received by the worker on any claims by body part and
31 category or percentage rating, as applicable. Copies of such
32 agreements and claims histories shall be furnished within ten working
33 days of a written request. An employer may not consider a prior
34 settlement agreement or claims history when making a decision about
35 hiring or the terms or conditions of employment.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.04 RCW
2 to read as follows:

3 If a worker has received a prior award of, or entered into a
4 voluntary settlement for, total or partial permanent disability
5 benefits, it shall be conclusively presumed that the medical condition
6 causing the prior permanent disability exists and is disabling at the
7 time of any subsequent industrial injury or occupational disease.
8 Except in the case of total permanent disability, the accumulation of
9 all permanent disability awards issued with respect to any one part of
10 the body in favor of the worker may not exceed one hundred percent over
11 the worker's lifetime. When entering into a voluntary settlement
12 agreement under this chapter, the department or self-insured employer
13 may exclude amounts paid to settle claims for prior portions of a
14 worker's permanent total or partial disability.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.04 RCW
16 to read as follows:

17 The joint legislative audit and review committee shall contract for
18 an independent study of voluntary settlement agreements approved by the
19 board of industrial insurance appeals under section 1 of this act. The
20 study must be performed by a researcher that has experience in workers'
21 compensation systems. The study must evaluate settlement agreements of
22 state fund and self-insured claims, provide information on the impact
23 of settlement agreements to the state fund and to self-insured
24 employers, and evaluate the outcomes of workers who have settled their
25 claims. The joint legislative audit and review committee shall analyze
26 the study and make recommendations to the appropriate committees of the
27 legislature by November 1, 2015, regarding voluntary settlement
28 agreements. In implementing this section, the joint legislative audit
29 and review committee shall seek input from the department of labor and
30 industries, the board of industrial insurance appeals, and the workers'
31 compensation advisory committee.

32 **Sec. 5.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
33 each reenacted and amended to read as follows:

34 (1) When the total disability is only temporary, the schedule of
35 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
36 the total disability continues.

1 (2) Any compensation payable under this section for children not in
2 the custody of the injured worker as of the date of injury shall be
3 payable only to such person as actually is providing the support for
4 such child or children pursuant to the order of a court of record
5 providing for support of such child or children.

6 (3)(a) As soon as recovery is so complete that the present earning
7 power of the worker, at any kind of work, is restored to that existing
8 at the time of the occurrence of the injury, the payments shall cease.
9 If and so long as the present earning power is only partially restored,
10 the payments shall:

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

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

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

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

29 (4)(a) (~~Whenever~~) The legislature finds that long-term disability
30 and the cost of injuries is significantly reduced when injured workers
31 remain at work following their injury. To encourage employers at the
32 time of injury to provide light duty or transitional work for their
33 workers, wage subsidies and other incentives are made available to
34 employers insured with the department.

35 (b) The employer of injury (~~requests that~~) may provide light duty
36 or transitional work to a worker who is entitled to temporary total
37 disability under this chapter (~~be certified by a physician or licensed~~
38 advanced registered nurse practitioner as able to perform available

1 ~~work other than his or her usual work,~~). The employer or the
2 department shall obtain from the physician or licensed advanced
3 registered nurse practitioner a statement confirming the light duty or
4 transitional work is consistent with the worker's medical restrictions
5 related to the injury. This statement should be obtained before the
6 start of the light duty or transitional work unless the worker has
7 already returned to work with the employer of injury in which case the
8 statement may be obtained following the start date of the job. The
9 employer shall furnish to the physician or licensed advanced registered
10 nurse practitioner, with a copy to the worker, a statement describing
11 the work (~~(available)~~) with the employer of injury in terms that will
12 enable the physician or licensed advanced registered nurse practitioner
13 to relate the physical activities of the job to the worker's
14 disability. The physician or licensed advanced registered nurse
15 practitioner shall (~~(then determine)~~) confirm whether the worker is
16 physically able to perform the work described. The worker's temporary
17 total disability payments shall (~~(continue until the worker is released~~
18 ~~by his or her physician or licensed advanced registered nurse~~
19 ~~practitioner for the work, and begins the work with the employer of~~
20 ~~injury. If)~~) stop effective the date the light duty or transitional
21 job starts. Temporary total disability payments shall resume if the
22 work (~~(thereafter)~~) comes to an end before the worker's recovery is
23 sufficient in the judgment of his or her physician or licensed advanced
24 registered nurse practitioner to permit him or her to return to his or
25 her usual job, or to perform other available work offered by the
26 employer of injury(~~(, the worker's temporary total disability payments~~
27 ~~shall be resumed)~~). Should the available work described, once
28 undertaken by the worker, impede his or her recovery to the extent that
29 in the judgment of his or her physician or licensed advanced registered
30 nurse practitioner he or she should not continue to work, the worker's
31 temporary total disability payments shall be resumed when the worker
32 ceases such work at the direction of the physician or licensed advanced
33 registered nurse practitioner.

34 ~~((b))~~ (c) To further encourage employers to maintain the
35 employment of their injured workers, an employer insured with the
36 department and that offers work to a worker pursuant to this subsection
37 (4) shall be eligible for reimbursement of the injured worker's wages
38 for light duty or transitional work equal to fifty percent of the

1 basic, gross wages paid for that work, for a maximum of sixty-six work
2 days within a consecutive twenty-four month period. In no event may
3 the wage subsidies paid to an employer on a claim exceed ten thousand
4 dollars. Wage subsidies shall be calculated using the worker's basic
5 hourly wages or basic salary, and no subsidy shall be paid for any
6 other form of compensation or payment to the worker such as tips,
7 commissions, bonuses, board, housing, fuel, health care, dental care,
8 vision care, per diem, reimbursements for work-related expenses, or any
9 other payments. An employer may not, under any circumstances, receive
10 a wage subsidy for a day in which the worker did not actually perform
11 any work, regardless of whether or not the employer paid the worker
12 wages for that day.

13 (d) If an employer offers a worker work pursuant to this subsection
14 (4) and the worker must be provided with training or instruction to be
15 qualified to perform the offered work, the employer shall be eligible
16 for a reimbursement from the department for any tuition, books, fees,
17 and materials required for that training or instruction, up to a
18 maximum of one thousand dollars. Reimbursing an employer for the costs
19 of such training or instruction does not constitute a determination by
20 the department that the worker is eligible for vocational services
21 authorized by RCW 51.32.095 and 51.32.099.

22 (e) If an employer offers a worker work pursuant to this subsection
23 (4), and the employer provides the worker with clothing that is
24 necessary to allow the worker to perform the offered work, the employer
25 shall be eligible for reimbursement for such clothing from the
26 department, up to a maximum of four hundred dollars: PROVIDED,
27 HOWEVER, That an employer shall not receive reimbursement for any
28 clothing it provided to the worker that it normally provides to its
29 workers. The clothing purchased for the worker shall become the
30 worker's property once the work comes to an end.

31 (f) If an employer offers a worker work pursuant to this subsection
32 (4) and the worker must be provided with tools or equipment to perform
33 the offered work, the employer shall be eligible for a reimbursement
34 from the department for such tools and equipment and related costs as
35 determined by department rule, up to a maximum of two thousand five
36 hundred dollars. An employer shall not be reimbursed for any tools or
37 equipment purchased prior to offering the work to the worker pursuant

1 to this subsection (4). An employer shall not be reimbursed for any
2 tools or equipment that it normally provides to its workers. The tools
3 and equipment shall be the property of the employer.

4 (g) An employer may offer work to a worker pursuant to this
5 subsection (4) more than once, but in no event may the employer receive
6 wage subsidies for more than sixty-six days of work in a consecutive
7 twenty-four month period under one claim. An employer may continue to
8 offer work pursuant to this subsection (4) after the worker has
9 performed sixty-six days of work, but the employer shall not be
10 eligible to receive wage subsidies for such work.

11 (h) An employer shall not receive any wage subsidies or
12 reimbursement of any expenses pursuant to this subsection (4) unless
13 the employer has completed and submitted the reimbursement request on
14 forms developed by the department, along with all related information
15 required by department rules. No wage subsidy or reimbursement shall
16 be paid to an employer who fails to submit a form for such payment
17 within one year of the date the work was performed. In no event shall
18 an employer receive wage subsidy payments or reimbursements of any
19 expenses pursuant to this subsection (4) unless the worker's physician
20 or licensed advanced registered nurse practitioner has restricted him
21 or her from performing his or her usual work and the worker's physician
22 or licensed advanced registered nurse practitioner has released him or
23 her to perform the work offered.

24 (i) Payments made under (b) through (g) of this subsection are
25 subject to penalties under RCW 51.32.240(5) in cases where the funds
26 were obtained through willful misrepresentation.

27 (j) Once the worker returns to work under the terms of this
28 subsection (4), he or she shall not be assigned by the employer to work
29 other than the available work described without the (~~worker's written~~
30 consent, or without prior review and)) approval ((~~by~~)) of the worker's
31 physician or licensed advanced registered nurse practitioner. An
32 employer who directs a claimant to perform work other than that
33 approved by the attending physician and without the approval of the
34 worker's physician or licensed advanced registered nurse practitioner
35 shall not receive any wage subsidy or other reimbursements for such
36 work.

37 ((~~e~~)) (k) If the worker returns to work under this subsection
38 (4), any employee health and welfare benefits that the worker was

1 receiving at the time of injury shall continue or be resumed at the
2 level provided at the time of injury. Such benefits shall not be
3 continued or resumed if to do so is inconsistent with the terms of the
4 benefit program, or with the terms of the collective bargaining
5 agreement currently in force.

6 ~~((+d))~~ (1) In the event of any dispute as to the validity of the
7 work offered or as to the worker's ability to perform the available
8 work offered by the employer, the department shall make the final
9 determination pursuant to an order that contains the notice required by
10 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

11 (5) An employer's experience rating shall not be affected by the
12 employer's request for or receipt of wage subsidies.

13 (6) The department shall create a Washington stay-at-work account
14 which shall be funded by assessments of employers insured through the
15 state fund for the costs of the payments authorized by subsection (4)
16 of this section and for the cost of creating a reserve for anticipated
17 liabilities. Employers may collect up to one-half the fund assessment
18 from workers.

19 (7) No worker shall receive compensation for or during the day on
20 which injury was received or the three days following the same, unless
21 his or her disability shall continue for a period of fourteen
22 consecutive calendar days from date of injury: PROVIDED, That attempts
23 to return to work in the first fourteen days following the injury shall
24 not serve to break the continuity of the period of disability if the
25 disability continues fourteen days after the injury occurs.

26 ~~((+6))~~ (8) Should a worker suffer a temporary total disability and
27 should his or her employer at the time of the injury continue to pay
28 him or her the wages which he or she was earning at the time of such
29 injury, such injured worker shall not receive any payment provided in
30 subsection (1) of this section during the period his or her employer
31 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
32 sick leave, or other similar benefits shall not be deemed to be
33 payments by the employer for the purposes of this subsection.

34 ~~((+7))~~ (9) In no event shall the monthly payments provided in this
35 section:

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

16 (~~((+8))~~) (10) If the supervisor of industrial insurance determines
17 that the worker is voluntarily retired and is no longer attached to the
18 workforce, benefits shall not be paid under this section.

19 NEW SECTION. **Sec. 6.** The department of labor and industries shall
20 contract for an independent study of the return-to-work provisions
21 under RCW 51.32.090. The study must be performed by a researcher that
22 has experience in workers' compensation systems. When selecting the
23 independent researcher, the department shall consult with the workers'
24 compensation advisory committee. The study must evaluate the quality
25 and effectiveness of the return-to-work program and whether the program
26 is being utilized by employers, and evaluate the outcomes of workers
27 participating in the program. The study must be submitted to the
28 appropriate committees of the legislature by December 2016.

29 NEW SECTION. **Sec. 7.** The department of labor and industries may
30 adopt rules to implement this act.

31 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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