
SUBSTITUTE HOUSE BILL 2622

State of Washington 62nd Legislature 2012 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Kenney, Ormsby, Santos, and Moscoso)

READ FIRST TIME 01/31/12.

1 AN ACT Relating to communicating with workers in their primary
2 language; amending RCW 51.04.080, 51.28.010, 51.28.020, 51.28.030,
3 51.32.095, and 51.32.110; reenacting and amending RCW 51.52.060;
4 creating a new section; and providing an expiration date.

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

6 **Sec. 1.** RCW 51.04.080 and 2007 c 78 s 1 are each amended to read
7 as follows:

8 On all claims under this title, claimants' written notices, orders,
9 or warrants must be forwarded directly to the claimant until such time
10 as there has been entered an order on the claim appealable to the board
11 of industrial insurance appeals in the claimant's primary language as
12 designated in the claimant's application under RCW 51.28.020 or
13 51.28.030. Claimants' written notices, orders, or warrants may be
14 forwarded to the claimant in care of a representative before an order
15 has been entered if the claimant sets forth in writing the name and
16 address of the representative to whom the claimant desires this
17 information to be forwarded. If the claimant's application under RCW
18 51.28.020 or 51.28.030 designates a primary language other than English
19 and the claimant has designated a representative, the department shall,

1 upon request from the claimant's representative, send all
2 correspondence, written notices, and orders to the claimant's
3 representative in English rather than the primary language on the
4 claimant's application.

5 **Sec. 2.** RCW 51.28.010 and 2007 c 77 s 1 are each amended to read
6 as follows:

7 (1) Whenever any accident occurs to any worker it shall be the duty
8 of such worker or someone in his or her behalf to forthwith report such
9 accident to his or her employer, superintendent, or supervisor in
10 charge of the work, and of the employer to at once report such accident
11 and the injury resulting therefrom to the department pursuant to RCW
12 51.28.025 where the worker has received treatment from a physician or
13 a licensed advanced registered nurse practitioner, has been
14 hospitalized, disabled from work, or has died as the apparent result of
15 such accident and injury. The report of an accident shall allow the
16 worker to designate a primary language for purposes of communication
17 with respect to the claim.

18 (2) Upon receipt of such notice of accident, the department shall
19 immediately forward to the worker or his or her beneficiaries or
20 dependents notification, in nontechnical language, and in the language
21 designated by the worker, of their rights under this title. The notice
22 must specify the worker's right to receive health services from a
23 physician or a licensed advanced registered nurse practitioner of the
24 worker's choice under RCW 51.36.010, including chiropractic services
25 under RCW 51.36.015, and must list the types of providers authorized to
26 provide these services.

27 (3) Employers shall not engage in claim suppression.

28 (4) For the purposes of this section, "claim suppression" means
29 intentionally:

30 (a) Inducing employees to fail to report injuries;

31 (b) Inducing employees to treat injuries in the course of
32 employment as off-the-job injuries; or

33 (c) Acting otherwise to suppress legitimate industrial insurance
34 claims.

35 (5) In determining whether an employer has engaged in claim
36 suppression, the department shall consider the employer's history of
37 compliance with industrial insurance reporting requirements, and

1 whether the employer has discouraged employees from reporting injuries
2 or filing claims. The department has the burden of proving claim
3 suppression by a preponderance of the evidence.

4 (6) Claim suppression does not include bona fide workplace safety
5 and accident prevention programs or an employer's provision at the
6 worksite of first aid as defined by the department. The department
7 shall adopt rules defining bona fide workplace safety and accident
8 prevention programs and defining first aid.

9 **Sec. 3.** RCW 51.28.020 and 2005 c 108 s 3 are each amended to read
10 as follows:

11 (1)(a) Where a worker is entitled to compensation under this title
12 he or she shall file with the department or his or her self-insured
13 employer, as the case may be, his or her application for such, together
14 with the certificate of the physician or licensed advanced registered
15 nurse practitioner who attended him or her. An application form
16 developed by the department shall include a notice specifying the
17 worker's right to receive health services from a physician or licensed
18 advanced registered nurse practitioner of the worker's choice under RCW
19 51.36.010, including chiropractic services under RCW 51.36.015, and
20 listing the types of providers authorized to provide these services.
21 The application form shall allow the worker to designate a primary
22 language for purposes of communication with respect to the claim.

23 (b) The physician or licensed advanced registered nurse
24 practitioner who attended the injured worker shall inform the injured
25 worker of his or her rights under this title and lend all necessary
26 assistance in making this application for compensation and such proof
27 of other matters as required by the rules of the department without
28 charge to the worker. The department shall provide physicians with a
29 manual which outlines the procedures to be followed in applications for
30 compensation involving occupational diseases, and which describes
31 claimants' rights and responsibilities related to occupational disease
32 claims.

33 (2) If the application required by this section is:

34 (a) Filed on behalf of the worker by the physician who attended the
35 worker, the physician may transmit the application to the department
36 electronically using facsimile mail;

1 (b) Made to the department and the employer has not received a copy
2 of the application, the department shall immediately send a copy of the
3 application to the employer; or

4 (c) Made to a self-insured employer, the employer shall forthwith
5 send a copy of the application to the department.

6 **Sec. 4.** RCW 51.28.030 and 2004 c 65 s 6 are each amended to read
7 as follows:

8 Where death results from injury the parties entitled to
9 compensation under this title, or someone in their behalf, shall make
10 application for the same to the department or self-insurer as the case
11 may be, which application must be accompanied with proof of death and
12 proof of relationship showing the parties to be entitled to
13 compensation under this title, certificates of attending physician or
14 licensed advanced registered nurse practitioner, if any, and such proof
15 as required by the rules of the department. An application form
16 developed by the department must allow the parties to designate a
17 primary language for purposes of communication with respect to the
18 claim.

19 Upon receipt of notice of accident under RCW 51.28.010, the
20 director shall immediately forward to the party or parties required to
21 make application for compensation under this section, notification, in
22 nontechnical language, of their rights under this title.

23 **Sec. 5.** RCW 51.32.095 and 2011 c 291 s 1 are each amended to read
24 as follows:

25 (1) One of the primary purposes of this title is to enable the
26 injured worker to become employable at gainful employment. To this
27 end, the department or self-insurers shall utilize the services of
28 individuals and organizations, public or private, whose experience,
29 training, and interests in vocational rehabilitation and retraining
30 qualify them to lend expert assistance to the supervisor of industrial
31 insurance in such programs of vocational rehabilitation as may be
32 reasonable to make the worker employable consistent with his or her
33 physical and mental status. Where, after evaluation and recommendation
34 by such individuals or organizations and prior to final evaluation of
35 the worker's permanent disability and in the sole opinion of the
36 supervisor or supervisor's designee, whether or not medical treatment

1 has been concluded, vocational rehabilitation is both necessary and
2 likely to enable the injured worker to become employable at gainful
3 employment, the supervisor or supervisor's designee may, in his or her
4 sole discretion, pay or, if the employer is a self-insurer, direct the
5 self-insurer to pay the cost as provided in subsection (4) of this
6 section or RCW 51.32.099, as appropriate. An injured worker may not
7 participate in vocational rehabilitation under this section or RCW
8 51.32.099 if such participation would result in a payment of benefits
9 as described in RCW 51.32.240(5), and any benefits so paid shall be
10 recovered according to the terms of that section.

11 (2) When in the sole discretion of the supervisor or the
12 supervisor's designee vocational rehabilitation is both necessary and
13 likely to make the worker employable at gainful employment, then the
14 following order of priorities shall be used:

15 (a) Return to the previous job with the same employer;

16 (b) Modification of the previous job with the same employer
17 including transitional return to work;

18 (c) A new job with the same employer in keeping with any
19 limitations or restrictions;

20 (d) Modification of a new job with the same employer including
21 transitional return to work;

22 (e) Modification of the previous job with a new employer;

23 (f) A new job with a new employer or self-employment based upon
24 transferable skills;

25 (g) Modification of a new job with a new employer;

26 (h) A new job with a new employer or self-employment involving on-
27 the-job training;

28 (i) Short-term retraining and job placement.

29 (3) Notwithstanding subsection (2) of this section, vocational
30 services may be provided to an injured worker who has suffered the loss
31 or complete use of both legs, or arms, or one leg and one arm, or total
32 eyesight when, in the sole discretion of the supervisor or the
33 supervisor's designee, these services will either substantially improve
34 the worker's quality of life or substantially improve the worker's
35 ability to function in an employment setting, regardless of whether or
36 not these services are either necessary or reasonably likely to make
37 the worker employable at any gainful employment. Vocational services
38 must be completed prior to the commencement of the worker's entitlement

1 to benefits under RCW 51.32.060. However, workers who are eligible for
2 vocational services under this subsection are not eligible for option
3 2 benefits, as provided in RCW 51.32.099(4).

4 (4)(a) For vocational plans approved prior to July 1, 1999, costs
5 for vocational rehabilitation benefits allowed by the supervisor or
6 supervisor's designee under subsection (1) of this section may include
7 the cost of books, tuition, fees, supplies, equipment, transportation,
8 child or dependent care, and other necessary expenses for any such
9 worker in an amount not to exceed three thousand dollars in any fifty-
10 two week period, and the cost of continuing the temporary total
11 disability compensation under RCW 51.32.090 while the worker is
12 actively and successfully undergoing a formal program of vocational
13 rehabilitation.

14 (b) When the department has approved a vocational plan for a worker
15 between July 1, 1999, through December 31, 2007, costs for vocational
16 rehabilitation benefits allowed by the supervisor or supervisor's
17 designee under subsection (1) of this section may include the cost of
18 books, tuition, fees, supplies, equipment, child or dependent care, and
19 other necessary expenses for any such worker in an amount not to exceed
20 four thousand dollars in any fifty-two week period, and the cost of
21 transportation and continuing the temporary total disability
22 compensation under RCW 51.32.090 while the worker is actively and
23 successfully undergoing a formal program of vocational rehabilitation.

24 (c) The expenses allowed under (a) or (b) of this subsection may
25 include training fees for on-the-job training and the cost of
26 furnishing tools and other equipment necessary for self-employment or
27 reemployment. However, compensation or payment of retraining with job
28 placement expenses under (a) or (b) of this subsection may not be
29 authorized for a period of more than fifty-two weeks, except that such
30 period may, in the sole discretion of the supervisor after his or her
31 review, be extended for an additional fifty-two weeks or portion
32 thereof by written order of the supervisor.

33 (d) In cases where the worker is required to reside away from his
34 or her customary residence, the reasonable cost of board and lodging
35 shall also be paid.

36 (e) Costs paid under this subsection shall be chargeable to the
37 employer's cost experience or shall be paid by the self-insurer as the
38 case may be.

1 (5) In addition to the vocational rehabilitation expenditures
2 provided for under subsection (4) of this section and RCW 51.32.099, an
3 additional five thousand dollars may, upon authorization of the
4 supervisor or the supervisor's designee, be expended for: (a)
5 Accommodations for an injured worker that are medically necessary for
6 the worker to participate in an approved retraining plan; and (b)
7 accommodations necessary to perform the essential functions of an
8 occupation in which an injured worker is seeking employment, consistent
9 with the retraining plan or the recommendations of a vocational
10 evaluation. The injured worker's attending physician or licensed
11 advanced registered nurse practitioner must verify the necessity of the
12 modifications or accommodations. The total expenditures authorized in
13 this subsection and the expenditures authorized under RCW 51.32.250
14 shall not exceed five thousand dollars.

15 (6) When the department has approved a vocational plan for a worker
16 prior to January 1, 2008, regardless of whether the worker has begun
17 participating in the approved plan, costs for vocational rehabilitation
18 benefits allowed by the supervisor or supervisor's designee under
19 subsection (1) of this section are limited to those provided under
20 subsections (4) and (5) of this section.

21 For vocational plans approved for a worker between January 1, 2008,
22 through June 30, 2013, total vocational costs allowed by the supervisor
23 or supervisor's designee under subsection (1) of this section shall be
24 limited to those provided under the pilot program established in RCW
25 51.32.099, and vocational rehabilitation services shall conform to the
26 requirements in RCW 51.32.099.

27 (7) The department shall establish criteria to monitor the quality
28 and effectiveness of rehabilitation services provided by the
29 individuals and organizations used under subsection (1) of this section
30 and under RCW 51.32.099. The state fund shall make referrals for
31 vocational rehabilitation services based on these performance criteria.

32 (8) The department shall engage in, where feasible and cost-
33 effective, a cooperative program with the state employment security
34 department to provide job placement services under this section and RCW
35 51.32.099.

36 (9) The benefits in this section and RCW 51.32.099 shall be
37 provided for the injured workers of self-insured employers. Self-
38 insurers shall report both benefits provided and benefits denied under

1 this section and RCW 51.32.099 in the manner prescribed by the
2 department by rule adopted under chapter 34.05 RCW. The director may,
3 in his or her sole discretion and upon his or her own initiative or at
4 any time that a dispute arises under this section or RCW 51.32.099,
5 promptly make such inquiries as circumstances require and take such
6 other action as he or she considers will properly determine the matter
7 and protect the rights of the parties.

8 (10) Except as otherwise provided in this section or RCW 51.32.099,
9 the benefits provided for in this section and RCW 51.32.099 are
10 available to any otherwise eligible worker regardless of the date of
11 industrial injury. However, claims shall not be reopened solely for
12 vocational rehabilitation purposes.

13 (11) If the application for benefits under RCW 51.28.020 designates
14 a primary language other than English, the worker must be provided
15 interpreter services for any vocational meetings conducted pursuant to
16 this section.

17 **Sec. 6.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
18 as follows:

19 (1) Any worker entitled to receive any benefits or claiming such
20 under this title shall, if requested by the department or self-insurer,
21 submit himself or herself for medical examination, at a time and from
22 time to time, at a place reasonably convenient for the worker and as
23 may be provided by the rules of the department. An injured worker,
24 whether an alien or other injured worker, who is not residing in the
25 United States at the time that a medical examination is requested may
26 be required to submit to an examination at any location in the United
27 States determined by the department or self-insurer. If the
28 application for benefits under RCW 51.28.020 designates a primary
29 language other than English, the worker must be provided interpreter
30 services for any examination under this section.

31 (2) If the worker refuses to submit to medical examination, or
32 obstructs the same, or, if any injured worker shall persist in
33 unsanitary or injurious practices which tend to imperil or retard his
34 or her recovery, or shall refuse to submit to such medical or surgical
35 treatment as is reasonably essential to his or her recovery or refuse
36 or obstruct evaluation or examination for the purpose of vocational
37 rehabilitation or does not cooperate in reasonable efforts at such

1 rehabilitation, the department or the self-insurer upon approval by the
2 department, with notice to the worker may suspend any further action on
3 any claim of such worker so long as such refusal, obstruction,
4 noncooperation, or practice continues and reduce, suspend, or deny any
5 compensation for such period: PROVIDED, That the department or the
6 self-insurer shall not suspend any further action on any claim of a
7 worker or reduce, suspend, or deny any compensation if a worker has
8 good cause for refusing to submit to or to obstruct any examination,
9 evaluation, treatment, or practice requested by the department or
10 required under this section.

11 (3) If the worker necessarily incurs traveling expenses in
12 attending the examination pursuant to the request of the department or
13 the self-insurer, such traveling expenses shall be repaid to him or her
14 out of the accident fund upon proper voucher and audit or shall be
15 repaid by the self-insurer, as the case may be.

16 (4)(a) If the medical examination required by this section causes
17 the worker to be absent from his or her work without pay:

18 (i) In the case of a worker insured by the department, the worker
19 shall be paid compensation out of the accident fund in an amount equal
20 to his or her usual wages for the time lost from work while attending
21 the medical examination; or

22 (ii) In the case of a worker of a self-insurer, the self-insurer
23 shall pay the worker an amount equal to his or her usual wages for the
24 time lost from work while attending the medical examination.

25 (b) This subsection (4) shall apply prospectively to all claims
26 regardless of the date of injury.

27 **Sec. 7.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are
28 each reenacted and amended to read as follows:

29 (1)(a) Except as otherwise specifically provided in this section,
30 a worker, beneficiary, employer, health services provider, or other
31 person aggrieved by an order, decision, or award of the department
32 must, before he or she appeals to the courts, file with the board and
33 the director, by mail or personally, within sixty days from the day on
34 which a copy of the order, decision, or award was communicated to such
35 person, a notice of appeal to the board. However, a health services
36 provider or other person aggrieved by a department order or decision
37 making demand, whether with or without penalty, solely for repayment of

1 sums paid to a provider of medical, dental, vocational, or other health
2 services rendered to an industrially injured worker must, before he or
3 she appeals to the courts, file with the board and the director, by
4 mail or personally, within twenty days from the day on which a copy of
5 the order or decision was communicated to the health services provider
6 upon whom the department order or decision was served, a notice of
7 appeal to the board. If the application under RCW 51.28.020 or
8 51.28.030 designates a primary language other than English, the order
9 is not communicated for purposes of the sixty-day requirement under
10 this subsection, until it is communicated in the language so
11 designated.

12 (b) Failure to file a notice of appeal with (~~both~~) the board and
13 the department shall not be grounds for denying the appeal if the
14 notice of appeal is filed with either the board or the department.

15 (2) Within ten days of the date on which an appeal has been granted
16 by the board, the board shall notify the other interested parties to
17 the appeal of the receipt of the appeal and shall forward a copy of the
18 notice of appeal to the other interested parties. Within twenty days
19 of the receipt of such notice of the board, the worker or the employer
20 may file with the board a cross-appeal from the order of the department
21 from which the original appeal was taken.

22 (3) If within the time limited for filing a notice of appeal to the
23 board from an order, decision, or award of the department, the
24 department directs the submission of further evidence or the
25 investigation of any further fact, the time for filing the notice of
26 appeal shall not commence to run until the person has been advised in
27 writing of the final decision of the department in the matter. In the
28 event the department directs the submission of further evidence or the
29 investigation of any further fact, as provided in this section, the
30 department shall render a final order, decision, or award within ninety
31 days from the date further submission of evidence or investigation of
32 further fact is ordered which time period may be extended by the
33 department for good cause stated in writing to all interested parties
34 for an additional ninety days.

35 (4) The department, either within the time limited for appeal, or
36 within thirty days after receiving a notice of appeal, may:

37 (a) Modify, reverse, or change any order, decision, or award; or

1 (b)(i) Except as provided in (b)(ii) of this subsection, hold an
2 order, decision, or award in abeyance for a period of ninety days which
3 time period may be extended by the department for good cause stated in
4 writing to all interested parties for an additional ninety days pending
5 further investigation in light of the allegations of the notice of
6 appeal; or

7 (ii) Hold an order, decision, or award issued under RCW 51.32.160
8 in abeyance for a period not to exceed ninety days from the date of
9 receipt of an application under RCW 51.32.160. The department may
10 extend the ninety-day time period for an additional sixty days for good
11 cause.

12 For purposes of this subsection, good cause includes delay that
13 results from conduct of the claimant that is subject to sanction under
14 RCW 51.32.110.

15 The board shall deny the appeal upon the issuance of an order under
16 (b)(i) or (ii) of this subsection holding an earlier order, decision,
17 or award in abeyance, without prejudice to the appellant's right to
18 appeal from any subsequent determinative order issued by the
19 department.

20 This subsection (4)(b) does not apply to applications deemed
21 granted under RCW 51.32.160.

22 (5) An employer shall have the right to appeal an application
23 deemed granted under RCW 51.32.160 on the same basis as any other
24 application adjudicated pursuant to that section.

25 (6) A provision of this section shall not be deemed to change,
26 alter, or modify the practice or procedure of the department for the
27 payment of awards pending appeal.

28 NEW SECTION. **Sec. 8.** This act applies to all claims open after
29 January 1, 2013.

30 NEW SECTION. **Sec. 9.** Section 5 of this act expires June 30, 2013.

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