

1 forwarded. If the claimant's application under RCW 51.28.020 or
2 51.28.030 designates a primary language other than English and the
3 claimant has designated a representative, the department shall, upon
4 request from the claimant's representative, send all correspondence,
5 written notices, and orders to the claimant's representative in English
6 rather than the primary language on the claimant's application.

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

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

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

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

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

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

33 (b) Inducing employees to treat injuries in the course of
34 employment as off-the-job injuries; (~~or~~)

35 (c) Refusing to provide an appropriate self-insurer accident report
36 form; or

1 (d) Acting otherwise to suppress legitimate industrial insurance
2 claims.

3 (5) In determining whether an employer has engaged in claim
4 suppression, the department shall consider the employer's history of
5 compliance with industrial insurance reporting requirements, and
6 whether the employer has discouraged employees from reporting injuries
7 or filing claims. The department has the burden of proving claim
8 suppression by a preponderance of the evidence.

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

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

16 (1)(a) Where a worker is entitled to compensation under this title
17 he or she shall file with the department or his or her self-insured
18 employer, as the case may be, his or her application for such, together
19 with the certificate of the physician or licensed advanced registered
20 nurse practitioner who attended him or her. An application form
21 developed by the department shall include a notice specifying the
22 worker's right to receive health services from a physician or licensed
23 advanced registered nurse practitioner of the worker's choice under RCW
24 51.36.010, including chiropractic services under RCW 51.36.015, and
25 listing the types of providers authorized to provide these services.
26 The application form shall allow the worker to designate a primary
27 language for purposes of communication with respect to the claim.

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

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

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

5 (b) Made to the department and the employer has not received a copy
6 of the application, the department shall immediately send a copy of the
7 application to the employer; or

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

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

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

23 Upon receipt of notice of accident under RCW 51.28.010, the
24 director or self-insurer, as the case may be, shall immediately forward
25 to the party or parties required to make application for compensation
26 under this section, notification, in nontechnical language, of their
27 rights under this title.

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

30 (1) One of the primary purposes of this title is to enable the
31 injured worker to become employable at gainful employment. To this
32 end, the department or self-insurers shall utilize the services of
33 individuals and organizations, public or private, whose experience,
34 training, and interests in vocational rehabilitation and retraining
35 qualify them to lend expert assistance to the supervisor of industrial
36 insurance in such programs of vocational rehabilitation as may be

1 reasonable to make the worker employable consistent with his or her
2 physical and mental status. Where, after evaluation and recommendation
3 by such individuals or organizations and prior to final evaluation of
4 the worker's permanent disability and in the sole opinion of the
5 supervisor or supervisor's designee, whether or not medical treatment
6 has been concluded, vocational rehabilitation is both necessary and
7 likely to enable the injured worker to become employable at gainful
8 employment, the supervisor or supervisor's designee may, in his or her
9 sole discretion, pay or, if the employer is a self-insurer, direct the
10 self-insurer to pay the cost as provided in subsection (4) of this
11 section or RCW 51.32.099, as appropriate. An injured worker may not
12 participate in vocational rehabilitation under this section or RCW
13 51.32.099 if such participation would result in a payment of benefits
14 as described in RCW 51.32.240(5), and any benefits so paid shall be
15 recovered according to the terms of that section.

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

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

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

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

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

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

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

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

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

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

34 (3) Notwithstanding subsection (2) of this section, vocational
35 services may be provided to an injured worker who has suffered the loss
36 or complete use of both legs, or arms, or one leg and one arm, or total
37 eyesight when, in the sole discretion of the supervisor or the
38 supervisor's designee, these services will either substantially improve

1 the worker's quality of life or substantially improve the worker's
2 ability to function in an employment setting, regardless of whether or
3 not these services are either necessary or reasonably likely to make
4 the worker employable at any gainful employment. Vocational services
5 must be completed prior to the commencement of the worker's entitlement
6 to benefits under RCW 51.32.060. However, workers who are eligible for
7 vocational services under this subsection are not eligible for option
8 2 benefits, as provided in RCW 51.32.099(4).

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

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

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

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

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

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

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

27 For vocational plans approved for a worker between January 1, 2008,
28 through June 30, 2013, total vocational costs allowed by the supervisor
29 or supervisor's designee under subsection (1) of this section shall be
30 limited to those provided under the pilot program established in RCW
31 51.32.099, and vocational rehabilitation services shall conform to the
32 requirements in RCW 51.32.099.

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

1 (8) The department shall engage in, where feasible and cost-
2 effective, a cooperative program with the state employment security
3 department to provide job placement services under this section and RCW
4 51.32.099.

5 (9) The benefits in this section and RCW 51.32.099 shall be
6 provided for the injured workers of self-insured employers. Self-
7 insurers shall report both benefits provided and benefits denied under
8 this section and RCW 51.32.099 in the manner prescribed by the
9 department by rule adopted under chapter 34.05 RCW. The director may,
10 in his or her sole discretion and upon his or her own initiative or at
11 any time that a dispute arises under this section or RCW 51.32.099,
12 promptly make such inquiries as circumstances require and take such
13 other action as he or she considers will properly determine the matter
14 and protect the rights of the parties.

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

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

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

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

1 (2) If the worker refuses to submit to medical examination, or
2 obstructs the same, or, if any injured worker shall persist in
3 unsanitary or injurious practices which tend to imperil or retard his
4 or her recovery, or shall refuse to submit to such medical or surgical
5 treatment as is reasonably essential to his or her recovery or refuse
6 or obstruct evaluation or examination for the purpose of vocational
7 rehabilitation or does not cooperate in reasonable efforts at such
8 rehabilitation, the department or the self-insurer upon approval by the
9 department, with notice to the worker may suspend any further action on
10 any claim of such worker so long as such refusal, obstruction,
11 noncooperation, or practice continues and reduce, suspend, or deny any
12 compensation for such period: PROVIDED, That the department or the
13 self-insurer shall not suspend any further action on any claim of a
14 worker or reduce, suspend, or deny any compensation if a worker has
15 good cause for refusing to submit to or to obstruct any examination,
16 evaluation, treatment, or practice requested by the department or self-
17 insurer or required under this section. Any suspension of benefits
18 must not be longer than necessary to obtain compliance or cooperation
19 and must be the least severe option available.

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

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

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

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

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

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

1 (1)(a) Except as otherwise specifically provided in this section,
2 a worker, beneficiary, employer, health services provider, or other
3 person aggrieved by an order, decision, or award of the department or
4 self-insurer must, before he or she appeals to the courts, file with
5 the board, the worker, and the director, by mail or personally, and in
6 cases involving a self-insurer, with the self-insurer, within sixty
7 days from the day on which a copy of the order, decision, or award was
8 communicated to such person, a notice of appeal to the board. However,
9 a health services provider or other person aggrieved by a department
10 order or decision making demand, whether with or without penalty,
11 solely for repayment of sums paid to a provider of medical, dental,
12 vocational, or other health services rendered to an industrially
13 injured worker must, before he or she appeals to the courts, file with
14 the board and the director, by mail or personally, within twenty days
15 from the day on which a copy of the order or decision was communicated
16 to the health services provider upon whom the department order or
17 decision was served, a notice of appeal to the board. If the
18 application under RCW 51.28.020 or 51.28.030 designates a primary
19 language other than English, the order is not communicated for purposes
20 of the sixty-day requirement under this subsection, until it is
21 communicated in the language so designated.

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

25 (2) Within ten days of the date on which an appeal has been granted
26 by the board, the board shall notify the other interested parties to
27 the appeal of the receipt of the appeal and shall forward a copy of the
28 notice of appeal to the other interested parties. Within twenty days
29 of the receipt of such notice of the board, the worker or the employer
30 may file with the board a cross-appeal from the order (~~of the~~
31 ~~department~~)) from which the original appeal was taken.

32 (3) If within the time limited for filing a notice of appeal to the
33 board from an order, decision, or award (~~of the department~~), the
34 department directs the submission of further evidence or the
35 investigation of any further fact, the time for filing the notice of
36 appeal shall not commence to run until the person has been advised in
37 writing of the final decision of the department in the matter. In the
38 event the department directs the submission of further evidence or the

1 investigation of any further fact, as provided in this section, the
2 department shall render a final order, decision, or award within ninety
3 days from the date further submission of evidence or investigation of
4 further fact is ordered which time period may be extended by the
5 department for good cause stated in writing to all interested parties
6 for an additional ninety days.

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

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

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

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

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

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

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

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

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

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

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

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