

SSB 5127 - S AMD 3

By Senators Hobbs, Hatfield, Shin, Mullet

NOT ADOPTED 02/01/2013

1 On page 1, line 5, strike all of section 1 and insert the
2 following:

3 "Sec. 1. RCW 51.04.063 and 2011 1st sp.s. c 37 s 302 are each
4 amended to read as follows:

5 (1) Notwithstanding RCW 51.04.060 or any other provision of this
6 title, beginning on January 1, 2012, an injured worker who is at least
7 fifty-five years of age on or after January 1, 2012, fifty-three years
8 of age on or after January 1, 2015, (~~(or)~~) fifty years of age on or
9 after January 1, 2016, forty-five years of age on or after January 1,
10 2018, or forty years of age on or after January 1, 2020, may choose
11 from the following: (a) To continue to receive all benefits for which
12 they are eligible under this title, (b) to participate in vocational
13 training if eligible, or (c) to initiate and agree to a resolution of
14 their claim with a structured settlement.

15 (2)(a) As provided in this section, the parties to an allowed
16 claim may initiate and agree to resolve a claim with a structured
17 settlement for all benefits other than medical. Parties as defined in
18 (b) of this subsection may only initiate claim resolution structured
19 settlements if at least one hundred eighty days have passed since the
20 claim was received by the department or self-insurer and the order
21 allowing the claim is final and binding. All requirements of this
22 title regarding entitlement to and payment of benefits will apply
23 during this period. All claim resolution structured settlement
24 agreements must be approved by the board of industrial insurance
25 appeals.

26 (b) For purposes of this section, "parties" means:
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1 (i) For a state fund claim, the worker, the employer, and the
2 department. The employer will not be a party if the costs of the
3 claim or claims are no longer included in the calculation of the
4 employer's experience factor used to determine premiums, if they
5 cannot be located, are no longer in business, or they fail to respond
6 or decline to participate after timely notice of the claim resolution
7 settlement process provided by the board and the department.

8 (ii) For a self-insured claim, the worker and the employer.

9 (c) The claim resolution structured settlement agreements shall:

10 (i) Bind the parties with regard to all aspects of a claim except
11 medical benefits unless revoked by one of the parties as provided in
12 subsection (6) of this section;

13 (ii) Provide a periodic payment schedule to the worker equal to at
14 least twenty-five percent but not more than one hundred fifty percent
15 of the average monthly wage in the state pursuant to RCW 51.08.018,
16 except for the initial payment which may be up to six times the
17 average monthly wage in the state pursuant to RCW 51.08.018;

18 (iii) Not set aside or reverse an allowance order;

19 (iv) Not subject any employer who is not a signatory to the
20 agreement to any responsibility or burden under any claim; and

21 (v) Not subject any funds covered under this title to any
22 responsibility or burden without prior approval from the director or
23 designee.

24 (d) For state fund claims, the department shall negotiate the
25 claim resolution structured settlement agreement with the worker or
26 their representative and with the employer or employers and their
27 representative or representatives.

28 (e) For self-insured claims, the self-insured employer shall
29 negotiate the agreement with the worker or their representative.
30 Workers of self-insured employers who are unrepresented may request
31 that the office of the ombudsman for self-insured injured workers
32 provide assistance or be present during negotiations.

33 (f) Terms of the agreement may include the parties' agreement that
34 the claim shall remain open for future necessary medical or surgical

1 treatment related to the injury where there is a reasonable
2 expectation such treatment is necessary. The parties may also agree
3 that specific future treatment shall be provided without the
4 application required in RCW 51.32.160.

5 (g) Any claim resolution structured settlement agreement entered
6 into under this section must be in writing and signed by the parties
7 or their representatives and must clearly state that the parties
8 understand and agree to the terms of the agreement.

9 (h) If a worker is not represented by an attorney at the time of
10 signing a claim resolution structured settlement agreement, the
11 parties must forward a copy of the signed agreement to the board with
12 a request for a conference with an industrial appeals judge. The
13 industrial appeals judge must schedule a conference with all parties
14 within fourteen days for the purpose of (i) reviewing the terms of the
15 proposed settlement agreement by the parties; and (ii) ensuring the
16 worker has an understanding of the benefits generally available under
17 this title and that a claim resolution structured settlement agreement
18 may alter the benefits payable on the claim or claims. The judge may
19 schedule the initial conference for a later date with the consent of
20 the parties.

21 (i) Before approving the agreement, the industrial appeals judge
22 shall ensure the worker has an adequate understanding of the agreement
23 and its consequences to the worker.

24 (j) The industrial appeals judge may approve a claim resolution
25 structured settlement agreement only if the judge finds that the
26 agreement is in the best interest of the worker. When determining
27 whether the agreement is in the best interest of the worker, the
28 industrial appeals judge shall consider the following factors, taken
29 as a whole, with no individual factor being determinative:

30 (i) The nature and extent of the injuries and disabilities of the
31 worker;

32 (ii) The age and life expectancy of the injured worker;

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1 (iii) Other benefits the injured worker is receiving or is
2 entitled to receive and the effect a claim resolution structured
3 settlement agreement might have on those benefits; and

4 (iv) The marital or domestic partnership status of the injured
5 worker.

6 (k) Within seven days after the conference, the industrial appeals
7 judge shall issue an order allowing or rejecting the claim resolution
8 structured settlement agreement. There is no appeal from the
9 industrial appeals judge's decision.

10 (l) If the industrial appeals judge issues an order allowing the
11 claim resolution structured settlement agreement, the order must be
12 submitted to the board.

13 (3) Upon receiving the agreement, the board shall approve it
14 within thirty working days of receipt unless it finds that:

15 (a) The parties have not entered into the agreement knowingly and
16 willingly;

17 (b) The agreement does not meet the requirements of a claim
18 resolution structured settlement agreement;

19 (c) The agreement is the result of a material misrepresentation of
20 law or fact;

21 (d) The agreement is the result of harassment or coercion; or

22 (e) The agreement is unreasonable as a matter of law.

23 (4) If a worker is represented by an attorney at the time of
24 signing a claim resolution structured settlement agreement, the
25 parties shall submit the agreement directly to the board without the
26 conference described in this section. The requirements of a claim
27 resolution structured settlement agreement for the purposes of
28 subsection (3) of this section do not include the determination under
29 subsection (2)(j) of this section if a worker is represented by an
30 attorney at the time of signing a claim resolution structured
31 settlement agreement.

32 (5) If the board approves the agreement, it shall provide notice
33 to all parties. The department shall place the agreement in the
34 applicable claim file or files.

1 (6) A party may revoke consent to the claim resolution structured
2 settlement agreement by providing written notice to the other parties
3 and the board within thirty days after the date the agreement is
4 approved by the board.

5 (7) To the extent the worker is entitled to any benefits while a
6 claim resolution structured settlement agreement is being negotiated
7 or during the revocation period of an agreement, the benefits must be
8 paid pursuant to the requirements of this title until the agreement
9 becomes final.

10 (8) A claim resolution structured settlement agreement that meets
11 the conditions in this section and that has become final and binding
12 as provided in this section is binding on all parties to the agreement
13 as to its terms and the injuries and occupational diseases to which
14 the agreement applies. A claim resolution structured settlement
15 agreement that has become final and binding is not subject to appeal.

16 (9) All payments made to a worker pursuant to a final claim
17 resolution structured settlement agreement must be reported to the
18 department as claims costs pursuant to this title. If a self-insured
19 employer contracts with a third-party administrator for claim services
20 and the payment of benefits under this title, the third-party
21 administrator shall also disburse the structured settlement payments
22 pursuant to the agreement.

23 (10) Claims closed pursuant to a claim resolution structured
24 settlement agreement can be reopened pursuant to RCW 51.32.160 for
25 medical treatment only. Further temporary total, temporary partial,
26 permanent partial, or permanent total benefits are not payable under
27 the same claim or claims for which a claim resolution structured
28 settlement agreement has been approved by the board and has become
29 final.

30 (11) Parties aggrieved by the failure of any other party to comply
31 with the terms of a claim resolution structured settlement agreement
32 have one year from the date of failure to comply to petition to the
33 board. If the board determines that a party has failed to comply with
34 an agreement, they will order compliance and will impose a penalty

1 payable to the aggrieved party of up to twenty-five percent of the
2 monetary amount unpaid at the time the petition for noncompliance was
3 filed. The board will also decide on any disputes as to attorneys'
4 fees for services related to claim resolution structured settlement
5 agreements.

6 (12) Parties and their representatives may not use settlement
7 offers or the claim resolution structured settlement agreement process
8 to harass or coerce any party. If the department determines that an
9 employer has engaged in a pattern of harassment or coercion, the
10 employer may be subject to penalty or corrective action, and may be
11 removed from the retrospective rating program or be decertified from
12 self-insurance under RCW 51.14.030."

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EFFECT: The age restriction on settlement agreements in
existing law is preserved, and will lower to 45 in 2018, and to 40
in 2020.

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