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**SENATE BILL 5513**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Braun, Baumgartner, Dammeier, Rivers, Bailey, Sheldon, Schoesler, Warnick, and Honeyford

AN ACT Relating to creating the workers' recovery act by amending provisions governing structured settlements by lowering age barriers and clarifying legislative intent; amending RCW 51.04.063; and creating new sections.

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

**Sec.**  RCW 51.04.063 and 2014 c 142 s 2 are each amended to read as follows:

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

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

(b) For purposes of this section, "parties" means:

(i) For a state fund claim, the worker, the employer, and the department. The employer will not be a party if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums, if they cannot be located, are no longer in business, or they fail to respond or decline to participate after timely notice of the claim resolution settlement process provided by the board and the department.

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

(c) The claim resolution structured settlement agreements ((~~shall~~))must:

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

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

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

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

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

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

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or his or her representative. Workers of self-insured employers who are unrepresented may request that the office of the ombuds for self-insured injured workers provide assistance or be present during negotiations.

(f) Terms of the agreement may include the parties' agreement that the claim ((~~shall~~))must remain open for future necessary medical or surgical treatment related to the injury where there is a reasonable expectation such treatment is necessary. The parties may also agree that specific future treatment ((~~shall~~))must be provided without the application required in RCW 51.32.160.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Parties aggrieved by the failure of any other party to comply with the terms of a claim resolution structured settlement agreement have one year from the date of failure to comply to petition to the board. If the board determines that a party has failed to comply with an agreement, it will order compliance and will impose a penalty payable to the aggrieved party of up to twenty-five percent of the monetary amount unpaid at the time the petition for noncompliance was filed. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution structured settlement agreements.

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

(13) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals, other than final orders from the board of industrial insurance appeals, is private and exempt from disclosure under chapter 42.56 RCW.

(14) Information gathered during the claims resolution structured settlement agreement process, including but not limited to forms filled out by the parties and testimony during a claims resolution structured settlement conference before the board of industrial insurance appeals, is a statement made in the course of compromise negotiations and is inadmissible in any future litigation.

NEW SECTION. **Sec.**  This act may be known and cited as the workers' recovery act.

NEW SECTION. **Sec.**  The amendment to RCW 51.04.063(4) by this act is an explicit restatement of the legislature's original intent that a finding under RCW 51.04.063(2)(j) is required only when the worker is not represented by an attorney at the time of signing a claim resolution structured settlement agreement. Because this provision is a clarification of the legislature's original intent, it applies retroactively.

**--- END ---**