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HOUSE BILL 1778

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State of Washington                      64th Legislature                      2015 Regular Session

By Representatives Condotta, Manweller, G. Hunt, and Wilson

Read first time 01/28/15. Referred to Committee on Labor.

1            AN ACT Relating to lowering the workers' compensation structured  
2 settlements age requirement to thirty-five years of age beginning  
3 January 1, 2016; and amending RCW 51.04.063.

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

5            **Sec. 1.** RCW 51.04.063 and 2014 c 142 s 2 are each amended to  
6 read as follows:

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

16            (2)(a) As provided in this section, the parties to an allowed  
17 claim may initiate and agree to resolve a claim with a structured  
18 settlement for all benefits other than medical. Parties as defined in  
19 (b) of this subsection may only initiate claim resolution structured  
20 settlements if at least one hundred eighty days have passed since the  
21 claim was received by the department or self-insurer and the order

1 allowing the claim is final and binding. All requirements of this  
2 title regarding entitlement to and payment of benefits will apply  
3 during this period. All claim resolution structured settlement  
4 agreements must be approved by the board of industrial insurance  
5 appeals.

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

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

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

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

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

19 (ii) Provide a periodic payment schedule to the worker equal to  
20 at least twenty-five percent but not more than one hundred fifty  
21 percent of the average monthly wage in the state pursuant to RCW  
22 51.08.018, except for the initial payment which may be up to six  
23 times the average monthly wage in the state pursuant to RCW  
24 51.08.018;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (4) If a worker is represented by an attorney at the time of  
19 signing a claim resolution structured settlement agreement, the  
20 parties shall submit the agreement directly to the board without the  
21 conference described in this section.

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

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

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

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

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

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

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

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

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

37 (14) Information gathered during the claims resolution structured  
38 settlement agreement process, including but not limited to forms  
39 filled out by the parties and testimony during a claims resolution  
40 structured settlement conference before the board of industrial

1 insurance appeals, is a statement made in the course of compromise  
2 negotiations and is inadmissible in any future litigation.

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