
HOUSE BILL 2338

State of Washington 64th Legislature 2016 Regular Session

By Representatives Manweller, Haler, Condotta, Chandler, and Van Werven

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1 AN ACT Relating to implementing joint legislative audit and
2 review committee recommendations to improve claims management and
3 efficiencies in workers' compensation; amending RCW 51.32.090; and
4 creating new sections.

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

6 NEW SECTION. **Sec. 1.** The joint legislative audit and review
7 committee, in its report "Workers' Compensation Claims Management,"
8 concluded that the department of labor and industries could improve
9 workers' compensation claim outcomes by improving claims management
10 efficiencies, specifically clarifying the definition of
11 employability. As noted in the report, most states terminate
12 temporary total disability payments when an injured worker reaches
13 maximum medical improvement. The legislature intends to bring
14 Washington into parity with these states in order to achieve greater
15 claims management efficiency.

16 **Sec. 2.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
17 amended to read as follows:

18 (1) When the total disability is only temporary, the schedule of
19 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long

1 as the (~~total disability continues~~) worker has not yet reached
2 maximum medical improvement.

3 (2) Any compensation payable under this section for children not
4 in the custody of the injured worker as of the date of injury shall
5 be payable only to such person as actually is providing the support
6 for such child or children pursuant to the order of a court of record
7 providing for support of such child or children.

8 (3)(a) (~~As soon as recovery is so complete that the present~~
9 ~~earning power of the worker, at any kind of work, is restored to that~~
10 ~~existing at the time of the occurrence of the injury, the payments~~
11 ~~shall cease. If and so long as the present earning power is only~~) If
12 the injured worker has not yet reached maximum medical improvement,
13 but their present earning power is partially restored, the payments
14 shall:

15 (i) For claims for injuries that occurred before May 7, 1993,
16 continue in the proportion which the new earning power shall bear to
17 the old; or

18 (ii) For claims for injuries occurring on or after May 7, 1993,
19 equal eighty percent of the actual difference between the worker's
20 present wages and earning power at the time of injury, but: (A) The
21 total of these payments and the worker's present wages may not exceed
22 one hundred fifty percent of the average monthly wage in the state as
23 computed under RCW 51.08.018; (B) the payments may not exceed one
24 hundred percent of the entitlement as computed under subsection (1)
25 of this section; and (C) the payments may not be less than the worker
26 would have received if (a)(i) of this subsection had been applicable
27 to the worker's claim.

28 (b) No compensation shall be payable under this subsection (3)
29 unless the loss of earning power shall exceed five percent.

30 (c) The prior closure of the claim or the receipt of permanent
31 partial disability benefits shall not affect the rate at which loss
32 of earning power benefits are calculated upon reopening the claim.

33 (4)(a) The legislature finds that long-term disability and the
34 cost of injuries is significantly reduced when injured workers remain
35 at work following their injury. To encourage employers at the time of
36 injury to provide light duty or transitional work for their workers,
37 wage subsidies and other incentives are made available to employers
38 insured with the department.

39 (b) Whenever the employer of injury requests that a worker who is
40 entitled to temporary total disability under this chapter be

1 certified by a physician or licensed advanced registered nurse
2 practitioner as able to perform available work other than his or her
3 usual work, the employer shall furnish to the physician or licensed
4 advanced registered nurse practitioner, with a copy to the worker, a
5 statement describing the work available with the employer of injury
6 in terms that will enable the physician or licensed advanced
7 registered nurse practitioner to relate the physical activities of
8 the job to the worker's disability. The physician or licensed
9 advanced registered nurse practitioner shall then determine whether
10 the worker is physically able to perform the work described. The
11 worker's temporary total disability payments shall continue until the
12 worker is released by his or her physician or licensed advanced
13 registered nurse practitioner for the work, and begins the work with
14 the employer of injury. If the work thereafter comes to an end before
15 the worker's recovery is sufficient in the judgment of his or her
16 physician or licensed advanced registered nurse practitioner to
17 permit him or her to return to his or her usual job, or to perform
18 other available work offered by the employer of injury, the worker's
19 temporary total disability payments shall be resumed. Should the
20 available work described, once undertaken by the worker, impede his
21 or her recovery to the extent that in the judgment of his or her
22 physician or licensed advanced registered nurse practitioner he or
23 she should not continue to work, the worker's temporary total
24 disability payments shall be resumed when the worker ceases such
25 work.

26 (c) To further encourage employers to maintain the employment of
27 their injured workers, an employer insured with the department and
28 that offers work to a worker pursuant to this subsection (4) shall be
29 eligible for reimbursement of the injured worker's wages for light
30 duty or transitional work equal to fifty percent of the basic, gross
31 wages paid for that work, for a maximum of sixty-six work days within
32 a consecutive twenty-four month period. In no event may the wage
33 subsidies paid to an employer on a claim exceed ten thousand dollars.
34 Wage subsidies shall be calculated using the worker's basic hourly
35 wages or basic salary, and no subsidy shall be paid for any other
36 form of compensation or payment to the worker such as tips,
37 commissions, bonuses, board, housing, fuel, health care, dental care,
38 vision care, per diem, reimbursements for work-related expenses, or
39 any other payments. An employer may not, under any circumstances,
40 receive a wage subsidy for a day in which the worker did not actually

1 perform any work, regardless of whether or not the employer paid the
2 worker wages for that day.

3 (d) If an employer insured with the department offers a worker
4 work pursuant to this subsection (4) and the worker must be provided
5 with training or instruction to be qualified to perform the offered
6 work, the employer shall be eligible for a reimbursement from the
7 department for any tuition, books, fees, and materials required for
8 that training or instruction, up to a maximum of one thousand
9 dollars. Reimbursing an employer for the costs of such training or
10 instruction does not constitute a determination by the department
11 that the worker is eligible for vocational services authorized by RCW
12 51.32.095 and 51.32.099.

13 (e) If an employer insured with the department offers a worker
14 work pursuant to this subsection (4), and the employer provides the
15 worker with clothing that is necessary to allow the worker to perform
16 the offered work, the employer shall be eligible for reimbursement
17 for such clothing from the department, up to a maximum of four
18 hundred dollars. However, an employer shall not receive reimbursement
19 for any clothing it provided to the worker that it normally provides
20 to its workers. The clothing purchased for the worker shall become
21 the worker's property once the work comes to an end.

22 (f) If an employer insured with the department offers a worker
23 work pursuant to this subsection (4) and the worker must be provided
24 with tools or equipment to perform the offered work, the employer
25 shall be eligible for a reimbursement from the department for such
26 tools and equipment and related costs as determined by department
27 rule, up to a maximum of two thousand five hundred dollars. An
28 employer shall not be reimbursed for any tools or equipment purchased
29 prior to offering the work to the worker pursuant to this subsection
30 (4). An employer shall not be reimbursed for any tools or equipment
31 that it normally provides to its workers. The tools and equipment
32 shall be the property of the employer.

33 (g) An employer may offer work to a worker pursuant to this
34 subsection (4) more than once, but in no event may the employer
35 receive wage subsidies for more than sixty-six days of work in a
36 consecutive twenty-four month period under one claim. An employer may
37 continue to offer work pursuant to this subsection (4) after the
38 worker has performed sixty-six days of work, but the employer shall
39 not be eligible to receive wage subsidies for such work.

1 (h) An employer shall not receive any wage subsidies or
2 reimbursement of any expenses pursuant to this subsection (4) unless
3 the employer has completed and submitted the reimbursement request on
4 forms developed by the department, along with all related information
5 required by department rules. No wage subsidy or reimbursement shall
6 be paid to an employer who fails to submit a form for such payment
7 within one year of the date the work was performed. In no event shall
8 an employer receive wage subsidy payments or reimbursements of any
9 expenses pursuant to this subsection (4) unless the worker's
10 physician or licensed advanced registered nurse practitioner has
11 restricted him or her from performing his or her usual work and the
12 worker's physician or licensed advanced registered nurse practitioner
13 has released him or her to perform the work offered.

14 (i) Payments made under (b) through (g) of this subsection are
15 subject to penalties under RCW 51.32.240(5) in cases where the funds
16 were obtained through willful misrepresentation.

17 (j) Once the worker returns to work under the terms of this
18 subsection (4), he or she shall not be assigned by the employer to
19 work other than the available work described without the worker's
20 written consent, or without prior review and approval by the worker's
21 physician or licensed advanced registered nurse practitioner. An
22 employer who directs a claimant to perform work other than that
23 approved by the attending physician and without the approval of the
24 worker's physician or licensed advanced registered nurse practitioner
25 shall not receive any wage subsidy or other reimbursements for such
26 work.

27 (k) If the worker returns to work under this subsection (4), any
28 employee health and welfare benefits that the worker was receiving at
29 the time of injury shall continue or be resumed at the level provided
30 at the time of injury. Such benefits shall not be continued or
31 resumed if to do so is inconsistent with the terms of the benefit
32 program, or with the terms of the collective bargaining agreement
33 currently in force.

34 (l) In the event of any dispute as to the validity of the work
35 offered or as to the worker's ability to perform the available work
36 offered by the employer, the department shall make the final
37 determination pursuant to an order that contains the notice required
38 by RCW 51.52.060 and that is subject to appeal subject to RCW
39 51.52.050.

1 (5) An employer's experience rating shall not be affected by the
2 employer's request for or receipt of wage subsidies.

3 (6) The department shall create a Washington stay-at-work account
4 which shall be funded by assessments of employers insured through the
5 state fund for the costs of the payments authorized by subsection (4)
6 of this section and for the cost of creating a reserve for
7 anticipated liabilities. Employers may collect up to one-half the
8 fund assessment from workers.

9 (7) No worker shall receive compensation for or during the day on
10 which injury was received or the three days following the same,
11 unless his or her disability shall continue for a period of fourteen
12 consecutive calendar days from date of injury: PROVIDED, That
13 attempts to return to work in the first fourteen days following the
14 injury shall not serve to break the continuity of the period of
15 disability if the disability continues fourteen days after the injury
16 occurs.

17 (8) Should a worker suffer a temporary total disability and
18 should his or her employer at the time of the injury continue to pay
19 him or her the wages which he or she was earning at the time of such
20 injury, such injured worker shall not receive any payment provided in
21 subsection (1) of this section during the period his or her employer
22 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
23 sick leave, or other similar benefits shall not be deemed to be
24 payments by the employer for the purposes of this subsection.

25 (9) In no event shall the monthly payments provided in this
26 section:

27 (a) Exceed the applicable percentage of the average monthly wage
28 in the state as computed under the provisions of RCW 51.08.018 as
29 follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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35 (b) For dates of injury or disease manifestation after July 1,
36 2008, be less than fifteen percent of the average monthly wage in the
37 state as computed under RCW 51.08.018 plus an additional ten dollars
38 per month if the worker is married and an additional ten dollars per

1 month for each child of the worker up to a maximum of five children.
2 However, if the monthly payment computed under this subsection (9)(b)
3 is greater than one hundred percent of the wages of the worker as
4 determined under RCW 51.08.178, the monthly payment due to the worker
5 shall be equal to the greater of the monthly wages of the worker or
6 the minimum benefit set forth in this section on June 30, 2008.

7 (10) If the supervisor of industrial insurance determines that
8 the worker is voluntarily retired and is no longer attached to the
9 workforce, benefits shall not be paid under this section.

10 (11) The department shall adopt rules as necessary to implement
11 this section.

12 NEW SECTION. **Sec. 3.** Section 2 of this act applies to injuries
13 occurring on or after the effective date of this section.

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