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ENGROSSED 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

Read first time 01/22/15. Referred to Committee on Commerce & Labor.

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

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

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

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

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

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

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

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

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

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

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

21 (ii) Provide a periodic payment schedule to the worker equal to  
22 at least twenty-five percent but not more than one hundred fifty  
23 percent of the average monthly wage in the state pursuant to RCW  
24 51.08.018, except for the initial payment which may be up to six  
25 times the average monthly wage in the state pursuant to RCW  
26 51.08.018;

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

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

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

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

37 (e) For self-insured claims, the self-insured employer shall  
38 negotiate the agreement with the worker or his or her representative.  
39 Workers of self-insured employers who are unrepresented may request

1 that the office of the ombuds for self-insured injured workers  
2 provide assistance or be present during negotiations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (8) A claim resolution structured settlement agreement that meets  
37 the conditions in this section and that has become final and binding  
38 as provided in this section is binding on all parties to the  
39 agreement as to its terms and the injuries and occupational diseases  
40 to which the agreement applies. A claim resolution structured

1 settlement agreement that has become final and binding is not subject  
2 to appeal.

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

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

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

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

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

39 (14) Information gathered during the claims resolution structured  
40 settlement agreement process, including but not limited to forms

1 filled out by the parties and testimony during a claims resolution  
2 structured settlement conference before the board of industrial  
3 insurance appeals, is a statement made in the course of compromise  
4 negotiations and is inadmissible in any future litigation.

5 NEW SECTION. **Sec. 2.** This act may be known and cited as the  
6 workers' recovery act.

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