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HOUSE BILL 1682

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State of Washington

66th Legislature

2019 Regular Session

By Representative Sells

Read first time 01/28/19. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to communicating claim closures by self-insured  
2 employers; and amending RCW 51.52.050.

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

4 **Sec. 1.** RCW 51.52.050 and 2011 c 290 s 9 are each amended to  
5 read as follows:

6 (1) Whenever the department has made any order, decision, or  
7 award, it shall promptly serve the worker, beneficiary, employer, or  
8 other person affected thereby, with a copy thereof by mail, or if the  
9 worker, beneficiary, employer, or other person affected thereby  
10 chooses, the department may send correspondence and other legal  
11 notices by secure electronic means except for orders communicating  
12 the closure of a claim. In the event the department has made an order  
13 communicating the closure of a claim of a self-insured employer, the  
14 self-insured employer may serve the department order provided it does  
15 so using a secure, verifiable nonelectronic means of delivery and  
16 includes a department-prescribed notice explaining the contents of  
17 the order and any protest or appeal rights. The service by the self-  
18 insured employer is a communication for the purposes of filing an  
19 appeal under RCW 51.52.060. Persons who choose to receive  
20 correspondence and other legal notices electronically shall be  
21 provided information to assist them in ensuring all electronic

1 documents and communications are received. Correspondence and notices  
2 must be addressed to such a person at his or her last known postal or  
3 electronic address as shown by the records of the department.  
4 Correspondence and notices sent electronically are considered  
5 received on the date sent by the department. The copy, in case the  
6 same is a final order, decision, or award, shall bear on the same  
7 side of the same page on which is found the amount of the award, a  
8 statement, set in black faced type of at least ten point body or  
9 size, that such final order, decision, or award shall become final  
10 within sixty days from the date the order is communicated to the  
11 parties unless a written request for reconsideration is filed with  
12 the department of labor and industries, Olympia, or an appeal is  
13 filed with the board of industrial insurance appeals, Olympia.  
14 However, a department order or decision making demand, whether with  
15 or without penalty, for repayment of sums paid to a provider of  
16 medical, dental, vocational, or other health services rendered to an  
17 industrially injured worker, shall state that such order or decision  
18 shall become final within twenty days from the date the order or  
19 decision is communicated to the parties unless a written request for  
20 reconsideration is filed with the department of labor and industries,  
21 Olympia, or an appeal is filed with the board of industrial insurance  
22 appeals, Olympia.

23 (2) (a) Whenever the department has taken any action or made any  
24 decision relating to any phase of the administration of this title  
25 the worker, beneficiary, employer, or other person aggrieved thereby  
26 may request reconsideration of the department, or may appeal to the  
27 board. In an appeal before the board, the appellant shall have the  
28 burden of proceeding with the evidence to establish a prima facie  
29 case for the relief sought in such appeal.

30 (b) An order by the department awarding benefits shall become  
31 effective and benefits due on the date issued. Subject to (b) (i) and  
32 (ii) of this subsection, if the department order is appealed the  
33 order shall not be stayed pending a final decision on the merits  
34 unless ordered by the board. Upon issuance of the order granting the  
35 appeal, the board will provide the worker with notice concerning the  
36 potential of an overpayment of benefits paid pending the outcome of  
37 the appeal and the requirements for interest on unpaid benefits  
38 pursuant to RCW 51.52.135. A worker may request that benefits cease  
39 pending appeal at any time following the employer's motion for stay  
40 or the board's order granting appeal. The request must be submitted

1 in writing to the employer, the board, and the department. Any  
2 employer may move for a stay of the order on appeal, in whole or in  
3 part. The motion must be filed within fifteen days of the order  
4 granting appeal. The board shall conduct an expedited review of the  
5 claim file provided by the department as it existed on the date of  
6 the department order. The board shall issue a final decision within  
7 twenty-five days of the filing of the motion for stay or the order  
8 granting appeal, whichever is later. The board's final decision may  
9 be appealed to superior court in accordance with RCW 51.52.110. The  
10 board shall grant a motion to stay if the moving party demonstrates  
11 that it is more likely than not to prevail on the facts as they  
12 existed at the time of the order on appeal. The board shall not  
13 consider the likelihood of recoupment of benefits as a basis to grant  
14 or deny a motion to stay. If a self-insured employer prevails on the  
15 merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

16 (i) If upon reconsideration requested by a worker or medical  
17 provider, the department has ordered an increase in a permanent  
18 partial disability award from the amount reflected in an earlier  
19 order, the award reflected in the earlier order shall not be stayed  
20 pending a final decision on the merits. However, the increase is  
21 stayed without further action by the board pending a final decision  
22 on the merits.

23 (ii) If any party appeals an order establishing a worker's wages  
24 or the compensation rate at which a worker will be paid temporary or  
25 permanent total disability or loss of earning power benefits, the  
26 worker shall receive payment pending a final decision on the merits  
27 based on the following:

28 (A) When the employer is self-insured, the wage calculation or  
29 compensation rate the employer most recently submitted to the  
30 department; or

31 (B) When the employer is insured through the state fund, the  
32 highest wage amount or compensation rate uncontested by the parties.

33 Payment of benefits or consideration of wages at a rate that is  
34 higher than that specified in (b)(ii)(A) or (B) of this subsection is  
35 stayed without further action by the board pending a final decision  
36 on the merits.

37 (c) In an appeal from an order of the department that alleges  
38 willful misrepresentation, the department or self-insured employer  
39 shall initially introduce all evidence in its case in chief. Any such  
40 person aggrieved by the decision and order of the board may

1 thereafter appeal to the superior court, as prescribed in this  
2 chapter.

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