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**SUBSTITUTE SENATE BILL 6552**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Stanford and Hasegawa)

READ FIRST TIME 02/04/20.

1 AN ACT Relating to reducing the number of days that a disability  
2 must continue to receive industrial insurance compensation for the  
3 three-day period following the injury; and amending RCW 51.32.090.

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

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

7 (1) When the total disability is only temporary, the schedule of  
8 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long  
9 as the total disability continues.

10 (2) Any compensation payable under this section for children not  
11 in the custody of the injured worker as of the date of injury shall  
12 be payable only to such person as actually is providing the support  
13 for such child or children pursuant to the order of a court of record  
14 providing for support of such child or children.

15 (3)(a) As soon as recovery is so complete that the present  
16 earning power of the worker, at any kind of work, is restored to that  
17 existing at the time of the occurrence of the injury, the payments  
18 shall cease. If and so long as the present earning power is only  
19 partially restored, the payments shall:

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

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

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

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

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

25 (b) Whenever the employer of injury requests that a worker who is  
26 entitled to temporary total disability under this chapter be  
27 certified by a physician or licensed advanced registered nurse  
28 practitioner as able to perform available work other than his or her  
29 usual work, the employer shall furnish to the physician or licensed  
30 advanced registered nurse practitioner, with a copy to the worker, a  
31 statement describing the work available with the employer of injury  
32 in terms that will enable the physician or licensed advanced  
33 registered nurse practitioner to relate the physical activities of  
34 the job to the worker's disability. The physician or licensed  
35 advanced registered nurse practitioner shall then determine whether  
36 the worker is physically able to perform the work described. The  
37 worker's temporary total disability payments shall continue until the  
38 worker is released by his or her physician or licensed advanced  
39 registered nurse practitioner for the work, and begins the work with  
40 the employer of injury. If the work thereafter comes to an end before

1 the worker's recovery is sufficient in the judgment of his or her  
2 physician or licensed advanced registered nurse practitioner to  
3 permit him or her to return to his or her usual job, or to perform  
4 other available work offered by the employer of injury, the worker's  
5 temporary total disability payments shall be resumed. Should the  
6 available work described, once undertaken by the worker, impede his  
7 or her recovery to the extent that in the judgment of his or her  
8 physician or licensed advanced registered nurse practitioner he or  
9 she should not continue to work, the worker's temporary total  
10 disability payments shall be resumed when the worker ceases such  
11 work.

12 (c) To further encourage employers to maintain the employment of  
13 their injured workers, an employer insured with the department and  
14 that offers work to a worker pursuant to this subsection (4) shall be  
15 eligible for reimbursement of the injured worker's wages for light  
16 duty or transitional work equal to fifty percent of the basic, gross  
17 wages paid for that work, for a maximum of sixty-six workdays within  
18 a consecutive twenty-four month period. In no event may the wage  
19 subsidies paid to an employer on a claim exceed ten thousand dollars.  
20 Wage subsidies shall be calculated using the worker's basic hourly  
21 wages or basic salary, and no subsidy shall be paid for any other  
22 form of compensation or payment to the worker such as tips,  
23 commissions, bonuses, board, housing, fuel, health care, dental care,  
24 vision care, per diem, reimbursements for work-related expenses, or  
25 any other payments. An employer may not, under any circumstances,  
26 receive a wage subsidy for a day in which the worker did not actually  
27 perform any work, regardless of whether or not the employer paid the  
28 worker wages for that day.

29 (d) If an employer insured with the department offers a worker  
30 work pursuant to this subsection (4) and the worker must be provided  
31 with training or instruction to be qualified to perform the offered  
32 work, the employer shall be eligible for a reimbursement from the  
33 department for any tuition, books, fees, and materials required for  
34 that training or instruction, up to a maximum of one thousand  
35 dollars. Reimbursing an employer for the costs of such training or  
36 instruction does not constitute a determination by the department  
37 that the worker is eligible for vocational services authorized by RCW  
38 51.32.095 and 51.32.099.

39 (e) If an employer insured with the department offers a worker  
40 work pursuant to this subsection (4), and the employer provides the

1 worker with clothing that is necessary to allow the worker to perform  
2 the offered work, the employer shall be eligible for reimbursement  
3 for such clothing from the department, up to a maximum of four  
4 hundred dollars. However, an employer shall not receive reimbursement  
5 for any clothing it provided to the worker that it normally provides  
6 to its workers. The clothing purchased for the worker shall become  
7 the worker's property once the work comes to an end.

8 (f) If an employer insured with the department offers a worker  
9 work pursuant to this subsection (4) and the worker must be provided  
10 with tools or equipment to perform the offered work, the employer  
11 shall be eligible for a reimbursement from the department for such  
12 tools and equipment and related costs as determined by department  
13 rule, up to a maximum of two thousand five hundred dollars. An  
14 employer shall not be reimbursed for any tools or equipment purchased  
15 prior to offering the work to the worker pursuant to this subsection  
16 (4). An employer shall not be reimbursed for any tools or equipment  
17 that it normally provides to its workers. The tools and equipment  
18 shall be the property of the employer.

19 (g) An employer may offer work to a worker pursuant to this  
20 subsection (4) more than once, but in no event may the employer  
21 receive wage subsidies for more than sixty-six days of work in a  
22 consecutive twenty-four month period under one claim. An employer may  
23 continue to offer work pursuant to this subsection (4) after the  
24 worker has performed sixty-six days of work, but the employer shall  
25 not be eligible to receive wage subsidies for such work.

26 (h) An employer shall not receive any wage subsidies or  
27 reimbursement of any expenses pursuant to this subsection (4) unless  
28 the employer has completed and submitted the reimbursement request on  
29 forms developed by the department, along with all related information  
30 required by department rules. No wage subsidy or reimbursement shall  
31 be paid to an employer who fails to submit a form for such payment  
32 within one year of the date the work was performed. In no event shall  
33 an employer receive wage subsidy payments or reimbursements of any  
34 expenses pursuant to this subsection (4) unless the worker's  
35 physician or licensed advanced registered nurse practitioner has  
36 restricted him or her from performing his or her usual work and the  
37 worker's physician or licensed advanced registered nurse practitioner  
38 has released him or her to perform the work offered.

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

4 (j) Once the worker returns to work under the terms of this  
5 subsection (4), he or she shall not be assigned by the employer to  
6 work other than the available work described without the worker's  
7 written consent, or without prior review and approval by the worker's  
8 physician or licensed advanced registered nurse practitioner. An  
9 employer who directs a claimant to perform work other than that  
10 approved by the attending physician and without the approval of the  
11 worker's physician or licensed advanced registered nurse practitioner  
12 shall not receive any wage subsidy or other reimbursements for such  
13 work.

14 (k) If the worker returns to work under this subsection (4), any  
15 employee health and welfare benefits that the worker was receiving at  
16 the time of injury shall continue or be resumed at the level provided  
17 at the time of injury. Such benefits shall not be continued or  
18 resumed if to do so is inconsistent with the terms of the benefit  
19 program, or with the terms of the collective bargaining agreement  
20 currently in force.

21 (l) In the event of any dispute as to the validity of the work  
22 offered or as to the worker's ability to perform the available work  
23 offered by the employer, the department shall make the final  
24 determination pursuant to an order that contains the notice required  
25 by RCW 51.52.060 and that is subject to appeal subject to RCW  
26 51.52.050.

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

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

35 (7) No worker shall receive compensation for or during the day on  
36 which injury was received or the three days following the same,  
37 unless his or her disability shall continue for a period of  
38 (~~fourteen~~) seven consecutive calendar days from date of injury:  
39 PROVIDED, That attempts to return to work in the first fourteen days  
40 following the injury shall not serve to break the continuity of the

1 period of disability if the disability continues fourteen days after  
2 the injury occurs.

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

11 (9) In no event shall the monthly payments provided in this  
12 section:

13 (a) Exceed the applicable percentage of the average monthly wage  
14 in the state as computed under the provisions of RCW 51.08.018 as  
15 follows:

	AFTER	PERCENTAGE
16		
17	June 30, 1993	105%
18	June 30, 1994	110%
19	June 30, 1995	115%
20	June 30, 1996	120%

21 (b) For dates of injury or disease manifestation after July 1,  
22 2008, be less than fifteen percent of the average monthly wage in the  
23 state as computed under RCW 51.08.018 plus an additional ten dollars  
24 per month if the worker is married and an additional ten dollars per  
25 month for each child of the worker up to a maximum of five children.  
26 However, if the monthly payment computed under this subsection (9)(b)  
27 is greater than one hundred percent of the wages of the worker as  
28 determined under RCW 51.08.178, the monthly payment due to the worker  
29 shall be equal to the greater of the monthly wages of the worker or  
30 the minimum benefit set forth in this section on June 30, 2008.

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

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

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