
SUBSTITUTE SENATE BILL 5137

State of Washington

67th Legislature

2021 Regular Session

By Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators King, Dozier, Gildon, Honeyford, Muzzall, Short, and Wagoner)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to suspending workers' compensation cost-of-
2 living adjustments for fiscal year 2022; and amending RCW 51.32.060,
3 51.32.072, 51.32.075, and 51.32.090.

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

5 **Sec. 1.** RCW 51.32.060 and 2007 c 284 s 2 are each amended to
6 read as follows:

7 (1) When the supervisor of industrial insurance shall determine
8 that permanent total disability results from the injury, the worker
9 shall receive monthly during the period of such disability:

10 (a) If married at the time of injury, sixty-five percent of his
11 or her wages.

12 (b) If married with one child at the time of injury, sixty-seven
13 percent of his or her wages.

14 (c) If married with two children at the time of injury,
15 sixty-nine percent of his or her wages.

16 (d) If married with three children at the time of injury,
17 seventy-one percent of his or her wages.

18 (e) If married with four children at the time of injury,
19 seventy-three percent of his or her wages.

20 (f) If married with five or more children at the time of injury,
21 seventy-five percent of his or her wages.

1 (g) If unmarried at the time of the injury, sixty percent of his
2 or her wages.

3 (h) If unmarried with one child at the time of injury, sixty-two
4 percent of his or her wages.

5 (i) If unmarried with two children at the time of injury,
6 sixty-four percent of his or her wages.

7 (j) If unmarried with three children at the time of injury,
8 sixty-six percent of his or her wages.

9 (k) If unmarried with four children at the time of injury,
10 sixty-eight percent of his or her wages.

11 (l) If unmarried with five or more children at the time of
12 injury, seventy percent of his or her wages.

13 (2) For any period of time where both husband and wife are
14 entitled to compensation as temporarily or totally disabled workers,
15 only that spouse having the higher wages of the two shall be entitled
16 to claim their child or children for compensation purposes.

17 (3) In case of permanent total disability, if the character of
18 the injury is such as to render the worker so physically helpless as
19 to require the hiring of the services of an attendant, the department
20 shall make monthly payments to such attendant for such services as
21 long as such requirement continues, but such payments shall not
22 obtain or be operative while the worker is receiving care under or
23 pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

24 (4) Should any further accident result in the permanent total
25 disability of an injured worker, he or she shall receive the pension
26 to which he or she would be entitled, notwithstanding the payment of
27 a lump sum for his or her prior injury.

28 (5) In no event shall the monthly payments provided in this
29 section:

30 (a) (i) Exceed the applicable percentage of the average monthly
31 wage in the state as computed under the provisions of RCW 51.08.018
32 as follows:

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

1 (ii) For payments made from July 1, 2021, to June 30, 2022, the
2 applicable percentage shall be applied to the average monthly wage as
3 computed on July 1, 2020.

4 (b) For dates of injury or disease manifestation after July 1,
5 2008, be less than fifteen percent of the average monthly wage in the
6 state as computed under RCW 51.08.018 plus an additional ten dollars
7 per month if a worker is married and an additional ten dollars per
8 month for each child of the worker up to a maximum of five children.
9 However, if the monthly payment computed under this subsection (5)(b)
10 is greater than one hundred percent of the wages of the worker as
11 determined under RCW 51.08.178, the monthly payment due to the worker
12 shall be equal to the greater of the monthly wages of the worker or
13 the minimum benefit set forth in this section on June 30, 2008.

14 The limitations under this subsection shall not apply to the
15 payments provided for in subsection (3) of this section.

16 (6) In the case of new or reopened claims, if the supervisor of
17 industrial insurance determines that, at the time of filing or
18 reopening, the worker is voluntarily retired and is no longer
19 attached to the workforce, benefits shall not be paid under this
20 section.

21 (7) The benefits provided by this section are subject to
22 modification under RCW 51.32.067.

23 **Sec. 2.** RCW 51.32.072 and 2011 1st sp.s. c 37 s 201 are each
24 amended to read as follows:

25 (1) Notwithstanding any other provision of law, every surviving
26 spouse and every permanently totally disabled worker or temporarily
27 totally disabled worker, if such worker was unmarried at the time of
28 the worker's injury or was then married but the marriage was later
29 terminated by judicial action, receiving a pension or compensation
30 for temporary total disability under this title pursuant to
31 compensation schedules in effect prior to July 1, 1971, shall after
32 July 1, 1975, through June 30, 2011, be paid fifty percent of the
33 average monthly wage in the state as computed under RCW 51.08.018 per
34 month and an amount equal to five percent of such average monthly
35 wage per month to such totally disabled worker if married at the time
36 of the worker's injury and the marriage was not later terminated by
37 judicial action, and an additional two percent of such average
38 monthly wage for each child of such totally disabled worker at the
39 time of injury in the legal custody of such totally disabled worker

1 or such surviving spouse up to a maximum of five such children. The
2 monthly payments such surviving spouse or totally disabled worker are
3 receiving pursuant to compensation schedules in effect prior to July
4 1, 1971 shall be deducted from the monthly payments above specified.

5 Where such a surviving spouse has remarried, or where any such
6 child of such worker, whether living or deceased, is not in the legal
7 custody of such worker or such surviving spouse there shall be paid
8 for the benefit of and on account of each such child a sum equal to
9 two percent of such average monthly wage up to a maximum of five such
10 children in addition to any payments theretofore paid under
11 compensation schedules in effect prior to July 1, 1971 for the
12 benefit of and on account of each such child. In the case of any
13 child or children of a deceased worker not leaving a surviving spouse
14 or where the surviving spouse has later died, there shall be paid for
15 the benefit of and on account of each such child a sum equal to two
16 percent of such average monthly wage up to a maximum of five such
17 children in addition to any payments theretofore paid under such
18 schedules for the benefit of and on account of each such child.

19 If the character of the injury or occupational disease is such as
20 to render the worker so physically helpless as to require the hiring
21 of the services of an attendant, the department shall make monthly
22 payments to such attendant for such services as long as such
23 requirement continues but such payments shall not obtain or be
24 operative while the worker is receiving care under or pursuant to the
25 provisions of this title except for care granted at the discretion of
26 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such
27 payments shall not be considered compensation nor shall they be
28 subject to any limitation upon total compensation payments.

29 No part of such additional payments shall be payable from the
30 accident fund.

31 The director shall pay monthly from the supplemental pension fund
32 such an amount as will, when added to the compensation theretofore
33 paid under compensation schedules in effect prior to July 1, 1971,
34 equal the amounts hereinabove specified.

35 In cases where money has been or shall be advanced to any such
36 person from the pension reserve, the additional amount to be paid
37 under this section shall be reduced by the amount of monthly pension
38 which was or is predicated upon such advanced portion of the pension
39 reserve.

1 (2) In addition to the adjustment under subsection (1) of this
2 section, further adjustments shall be made beginning July 1, 2012,
3 and on each July 1st thereafter (~~The~~) through June 30, 2021; the
4 adjustment shall be the percentage change in the average monthly wage
5 in the state under RCW 51.08.018 for the preceding calendar year,
6 rounded to the nearest whole cent. Further adjustments made beginning
7 July 1, 2022, shall be the percentage change in the average monthly
8 wage in the state under RCW 51.08.018 for the preceding calendar
9 year, rounded to the nearest whole cent.

10 (3) Compensation due for July 1, 2011, through June 30, 2012,
11 must be paid based on the average monthly wage in the state as
12 computed under RCW 51.08.018 on July 1, 2010. Compensation due for
13 July 1, 2021, through June 30, 2022, must be paid based on the
14 average monthly wage in the state as computed under RCW 51.08.018 on
15 July 1, 2020.

16 **Sec. 3.** RCW 51.32.075 and 2011 1st sp.s. c 37 s 202 are each
17 amended to read as follows:

18 The compensation or death benefits payable pursuant to the
19 provisions of this chapter for temporary total disability, permanent
20 total disability, or death arising out of injuries or occupational
21 diseases shall be adjusted as follows:

22 (1) On July 1, 1982, there shall be an adjustment for those whose
23 right to compensation was established on or after July 1, 1971, and
24 before July 1, 1982. The adjustment shall be determined by
25 multiplying the amount of compensation to which they are entitled by
26 a fraction, the denominator of which shall be the average monthly
27 wage in the state under RCW 51.08.018 for the fiscal year in which
28 such person's right to compensation was established, and the
29 numerator of which shall be the average monthly wage in the state
30 under RCW 51.08.018 on July 1, 1982.

31 (2) In addition to the adjustment established by subsection (1)
32 of this section, there shall be another adjustment on July 1, 1983,
33 for those whose right to compensation was established on or after
34 July 1, 1971, and before July 1983, which shall be determined by
35 multiplying the amount of compensation to which they are entitled by
36 a fraction, the denominator of which shall be the average monthly
37 wage in the state under RCW 51.08.018 for the fiscal year in which
38 such person's right to compensation was established, and the

1 numerator of which shall be the average monthly wage in the state
2 under RCW 51.08.018 on July 1, 1983.

3 (3) In addition to the adjustments under subsections (1) and (2)
4 of this section, further adjustments shall be made beginning on July
5 1, 1984, and on each July 1st thereafter through July 1, 2010, for
6 those whose right to compensation was established on or after July 1,
7 1971. The adjustment shall be determined by multiplying the amount of
8 compensation to which they are entitled by a fraction, the
9 denominator of which shall be the average monthly wage in the state
10 under RCW 51.08.018 for the fiscal year in which such person's right
11 to compensation was established, and the numerator of which shall be
12 the average monthly wage in the state under RCW 51.08.018 on July 1st
13 of the year in which the adjustment is being made. The department or
14 self-insurer shall adjust the resulting compensation rate to the
15 nearest whole cent, not to exceed the average monthly wage in the
16 state as computed under RCW 51.08.018.

17 (4) In addition to the adjustments under subsections (1), (2),
18 and (3) of this section, for those whose right to compensation was
19 established on or after July 1, 1971, further adjustments shall be
20 made beginning July 1, 2012, and on each July 1st thereafter (~~for~~
21 ~~those whose right to compensation was established on or after July 1,~~
22 ~~1971. The~~) through June 30, 2021, and the adjustment shall be the
23 percentage change in the average monthly wage in the state under RCW
24 51.08.018 for the preceding calendar year, rounded to the nearest
25 whole cent. Further adjustments made beginning July 1, 2022, shall be
26 the percentage change in the average monthly wage in the state under
27 RCW 51.08.018 for the preceding calendar year, rounded to the nearest
28 whole cent.

29 (5) For claims whose right to compensation was established on or
30 after July 1, 2011, no adjustment shall be made under this subsection
31 until the second July 1st following the date of injury or
32 occupational disease manifestation.

33 **Sec. 4.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
34 amended to read as follows:

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

38 (2) Any compensation payable under this section for children not
39 in the custody of the injured worker as of the date of injury shall

1 be payable only to such person as actually is providing the support
2 for such child or children pursuant to the order of a court of record
3 providing for support of such child or children.

4 (3) (a) As soon as recovery is so complete that the present
5 earning power of the worker, at any kind of work, is restored to that
6 existing at the time of the occurrence of the injury, the payments
7 shall cease. If and so long as the present earning power is only
8 partially restored, the payments shall:

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

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

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

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

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

33 (b) Whenever the employer of injury requests that a worker who is
34 entitled to temporary total disability under this chapter be
35 certified by a physician or licensed advanced registered nurse
36 practitioner as able to perform available work other than his or her
37 usual work, the employer shall furnish to the physician or licensed
38 advanced registered nurse practitioner, with a copy to the worker, a
39 statement describing the work available with the employer of injury
40 in terms that will enable the physician or licensed advanced

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

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

37 (d) If an employer insured with the department offers a worker
38 work pursuant to this subsection (4) and the worker must be provided
39 with training or instruction to be qualified to perform the offered
40 work, the employer shall be eligible for a reimbursement from the

1 department for any tuition, books, fees, and materials required for
2 that training or instruction, up to a maximum of one thousand
3 dollars. Reimbursing an employer for the costs of such training or
4 instruction does not constitute a determination by the department
5 that the worker is eligible for vocational services authorized by RCW
6 51.32.095 and 51.32.099.

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

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

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

34 (h) An employer shall not receive any wage subsidies or
35 reimbursement of any expenses pursuant to this subsection (4) unless
36 the employer has completed and submitted the reimbursement request on
37 forms developed by the department, along with all related information
38 required by department rules. No wage subsidy or reimbursement shall
39 be paid to an employer who fails to submit a form for such payment
40 within one year of the date the work was performed. In no event shall

1 an employer receive wage subsidy payments or reimbursements of any
2 expenses pursuant to this subsection (4) unless the worker's
3 physician or licensed advanced registered nurse practitioner has
4 restricted him or her from performing his or her usual work and the
5 worker's physician or licensed advanced registered nurse practitioner
6 has released him or her to perform the work offered.

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

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

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

27 (l) In the event of any dispute as to the validity of the work
28 offered or as to the worker's ability to perform the available work
29 offered by the employer, the department shall make the final
30 determination pursuant to an order that contains the notice required
31 by RCW 51.52.060 and that is subject to appeal subject to RCW
32 51.52.050.

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

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

1 (7) No worker shall receive compensation for or during the day on
2 which injury was received or the three days following the same,
3 unless his or her disability shall continue for a period of fourteen
4 consecutive calendar days from date of injury: PROVIDED, That
5 attempts to return to work in the first fourteen days following the
6 injury shall not serve to break the continuity of the period of
7 disability if the disability continues fourteen days after the injury
8 occurs.

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

17 (9) In no event shall the monthly payments provided in this
18 section:

19 (a) (i) Exceed the applicable percentage of the average monthly
20 wage in the state as computed under the provisions of RCW 51.08.018
21 as follows:

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

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27 (ii) For payments made from July 1, 2021, to June 30, 2022, the
28 applicable percentage shall be applied to the average monthly wage as
29 computed on July 1, 2020.

30 (b) For dates of injury or disease manifestation after July 1,
31 2008, be less than fifteen percent of the average monthly wage in the
32 state as computed under RCW 51.08.018 plus an additional ten dollars
33 per month if the worker is married and an additional ten dollars per
34 month for each child of the worker up to a maximum of five children.
35 However, if the monthly payment computed under this subsection (9) (b)
36 is greater than one hundred percent of the wages of the worker as
37 determined under RCW 51.08.178, the monthly payment due to the worker

1 shall be equal to the greater of the monthly wages of the worker or
2 the minimum benefit set forth in this section on June 30, 2008.

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

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

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