

SSB 5368 - S AMD 513
By Senator Keiser

PULLED 02/01/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The state established the stay-at-
4 work program to reduce long-term disability and the cost of injuries
5 by incentivizing employers to provide injured workers light duty and
6 transitional return-to-work opportunities. Data from the department
7 of labor and industries indicates that the program has lowered the
8 risk of long-term disability and can improve mental health and well-
9 being for workers who return to positions that allow for the time
10 necessary for healing and rehabilitation.

11 (2) However, current law only allows for light duty or
12 transitional return to work with the employer of injury, limiting
13 opportunities and creating inequities for workers and employers.
14 Small employers are less likely to have suitable light duty jobs.
15 Workers, particularly in small businesses, are less likely to have
16 access to remote light duty work. Injured workers who move out-of-
17 state are also less likely to have access to return-to-work
18 opportunities, especially when the employer of injury cannot offer
19 remote work options.

20 (3) The legislature hereby intends to provide more opportunities
21 for workers to access return to work and for employers to take
22 advantage of the stay-at-work program by allowing flexibility in
23 matching injured workers to temporary positions with local nonprofits
24 to perform light duty work. Workers eligible for the expanded program
25 pursuant to RCW 51.32.090(4)(m) will receive a written notice that
26 they have a right to reject a specific light duty job with a specific
27 nonprofit. This approach preserves all protections for injured
28 workers, reduces claim costs, transitions workers back to productive
29 work more quickly while allowing for recuperation, and benefits local
30 nonprofits by providing experienced workers for important service
31 roles.

1 **Sec. 2.** RCW 51.32.090 and 2023 c 171 s 7 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

1 (b) (i) Whenever the employer of injury requests that a worker who
2 is entitled to temporary total disability under this chapter be
3 certified by the attending provider as able to perform available work
4 other than his or her usual work, the employer shall furnish to the
5 attending provider, with a contemporaneous copy to the worker in
6 their preferred language, a ~~((statement describing the))~~ written job
7 description of the light duty or transitional work available with the
8 employer of injury, or with a nonprofit organization or charity
9 pursuant to (m) of this subsection, in terms that will enable the
10 attending provider to relate the activities of the job to the
11 worker's disability. The attending provider shall then determine
12 whether the worker is able to perform the work described. If more
13 than 21 calendar days have passed since the attending provider's last
14 appointment with the worker, the attending provider may meet with the
15 worker, if the attending provider deems necessary, to determine
16 whether the worker is able to perform the work. The attending
17 provider's determination must be shared with both the worker and
18 employer.

19 (ii) The worker shall accept or decline the light duty job offer
20 within seven days after receiving notification that the attending
21 provider has approved the job description. Failure to timely accept a
22 valid light duty job offer shall result in termination of temporary
23 total disability benefits except as described under (m)(iv) of this
24 subsection.

25 (iii) The worker's temporary total disability payments shall
26 continue until the worker ~~((is released by his or her attending~~
27 ~~provider for the work, and))~~ begins the light duty work with the
28 employer of injury or with a nonprofit organization or charity
29 pursuant to (m) of this subsection. If the light duty or transitional
30 work thereafter comes to an end before the worker's recovery is
31 sufficient in the judgment of his or her attending provider to permit
32 him or her to return to his or her usual job, or to perform other
33 available work offered ~~((by the employer of injury))~~ pursuant to this
34 section, the worker's temporary total disability payments shall be
35 resumed. Should the ~~((available))~~ light duty work ~~((described))~~, once
36 undertaken by the worker, impede his or her recovery to the extent
37 that in the judgment of his or her attending provider he or she
38 should not continue to work, the worker's temporary total disability
39 payments shall be resumed when the worker ceases such work.

1 (c) To further encourage employers to maintain the employment of
2 their injured workers, an employer insured with the department and
3 that offers work to a worker pursuant to this subsection (4) shall be
4 eligible for reimbursement of the injured worker's wages for light
5 duty or transitional work equal to (~~(fifty)~~) 50 percent of the basic,
6 gross wages paid for that work, for a maximum of (~~(sixty-six)~~) 66
7 workdays within a consecutive (~~(twenty-four month)~~) 24-month period.
8 In no event may the wage subsidies paid to an employer on a claim
9 exceed (~~(ten thousand dollars)~~) \$10,000. Wage subsidies shall be
10 calculated using the worker's basic hourly wages or basic salary, and
11 no subsidy shall be paid for any other form of compensation or
12 payment to the worker such as tips, commissions, bonuses, board,
13 housing, fuel, health care, dental care, vision care, per diem,
14 reimbursements for work-related expenses, or any other payments. An
15 employer may not, under any circumstances, receive a wage subsidy for
16 a day in which the worker did not actually perform any work,
17 regardless of whether or not the employer paid the worker wages for
18 that day.

19 (d) If an employer insured with the department offers a worker
20 work pursuant to this subsection (4) and the worker must be provided
21 with training or instruction to be qualified to perform the offered
22 work, the employer shall be eligible for a reimbursement from the
23 department for any tuition, books, fees, and materials required for
24 that training or instruction, up to a maximum of (~~(one thousand~~
25 ~~dollars)~~) \$1,000. Reimbursing an employer for the costs of such
26 training or instruction does not constitute a determination by the
27 department that the worker is eligible for vocational services
28 authorized by RCW 51.32.095 and 51.32.099.

29 (e) If an employer insured with the department offers a worker
30 work pursuant to this subsection (4), and the employer provides the
31 worker with clothing that is necessary to allow the worker to perform
32 the offered work, the employer shall be eligible for reimbursement
33 for such clothing from the department, up to a maximum of (~~(four~~
34 ~~hundred dollars)~~) \$400. However, an employer shall not receive
35 reimbursement for any clothing it provided to the worker that it
36 normally provides to its workers. The clothing purchased for the
37 worker shall become the worker's property once the work comes to an
38 end.

39 (f) If an employer insured with the department offers a worker
40 work pursuant to this subsection (4) and the worker must be provided

1 with tools or equipment to perform the offered work, the employer
2 shall be eligible for a reimbursement from the department for such
3 tools and equipment and related costs as determined by department
4 rule, up to a maximum of (~~two thousand five hundred dollars~~)
5 \$2,500. An employer shall not be reimbursed for any tools or
6 equipment purchased prior to offering the work to the worker pursuant
7 to this subsection (4). An employer shall not be reimbursed for any
8 tools or equipment that it normally provides to its workers. The
9 tools and equipment shall be the property of the employer.

10 (g) An employer may offer work to a worker pursuant to this
11 subsection (4) more than once, but in no event may the employer
12 receive wage subsidies for more than (~~sixty-six~~) 66 days of work in
13 a consecutive (~~twenty-four month~~) 24-month period under one claim.
14 An employer may continue to offer work pursuant to this subsection
15 (4) after the worker has performed (~~sixty-six~~) 66 days of work, but
16 the employer shall not be eligible to receive wage subsidies for such
17 work.

18 (h) An employer shall not receive any wage subsidies or
19 reimbursement of any expenses pursuant to this subsection (4) unless
20 the employer has completed and submitted the reimbursement request on
21 forms developed by the department, along with all related information
22 required by department rules. No wage subsidy or reimbursement shall
23 be paid to an employer who fails to submit a form for such payment
24 within one year of the date the work was performed. In no event shall
25 an employer receive wage subsidy payments or reimbursements of any
26 expenses pursuant to this subsection (4) unless the worker's
27 attending provider has restricted him or her from performing his or
28 her usual work and the worker's attending provider has released him
29 or her to perform the work offered.

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

33 (j) Once the worker returns to work under the terms of this
34 subsection (4), (~~he or she~~) the worker shall not be assigned by the
35 employer to work other than the available work described (~~without~~
36 ~~the worker's written consent, or~~) without prior review and approval
37 by the worker's attending provider. An employer who directs a
38 claimant to perform work other than that approved by the attending
39 provider and without the approval of the worker's attending provider

1 shall not receive any wage subsidy or other reimbursements for such
2 work.

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

10 (l) In the event of any dispute as to the validity of the work
11 offered or as to the worker's ability to perform the available work
12 offered by the employer, the department shall make the final
13 determination pursuant to an order that contains the notice required
14 by RCW 51.52.060 and that is subject to appeal subject to RCW
15 51.52.050.

16 (m) An employer with 100 or fewer employees may offer off-site,
17 light duty return to work to a worker pursuant to this subsection (4)
18 with an established nonprofit organization or charity pursuant to (n)
19 of this subsection, subject to the following parameters and
20 conditions:

21 (i) The employer of injury may not disclose the worker's medical
22 restrictions with the nonprofit organization or charity without the
23 worker's written consent. If the worker does not consent to the
24 disclosure of their medical restrictions with the nonprofit
25 organization or charity, any approved light duty work must be with
26 the employer of injury;

27 (ii) The employer of injury remains accountable for all reporting
28 requirements;

29 (iii) The employer of injury remains responsible for any new
30 injury or occupational disease incurred while the worker is on off-
31 site, light duty return to work;

32 (iv) The injured worker does not forfeit any protections or
33 benefits afforded to them under this title, and the injured worker
34 may reject a light duty return-to-work offer or otherwise terminate
35 the light duty return to work with the nonprofit organization or
36 charity, in which case the injured worker's temporary total
37 disability payments must continue or be resumed;

38 (v) Except as otherwise provided under this subsection (4)(m),
39 the offer of light duty return to work with the nonprofit

1 organization or charity is subject to the same parameters and
2 conditions as an offer of available work with the employer of injury;

3 (vi) The employer of injury may be eligible for reimbursement
4 under (c) through (g) of this subsection if the department determines
5 the employer qualifies; and

6 (vii) The worker's experience gained through any light duty work
7 under this subsection (4)(m) with the nonprofit organization or
8 charity may not be construed as acquisition of transferable skills
9 and does not disqualify the injured worker from accessing vocational
10 rehabilitation services or other retraining programs available under
11 this title.

12 (n)(i) To offer light duty, transitional work with a nonprofit
13 organization or charity under (m) of this subsection, the employer of
14 injury must contract with a return-to-work employment agency approved
15 by the department or work with a nonprofit organization or charity
16 listed as active on a secretary of state website. The department must
17 develop the criteria in rule for a return-to-work employment agency
18 to receive department approval under this subsection.

19 (ii) The department must work with the vocational rehabilitation
20 advisory committee established in RCW 51.32.096 to research and
21 report on meaningful return-to-work outcomes and the benefits of
22 return to work on workers' mental health. The advisory committee must
23 also study the quality of the work and benefits to the worker of
24 transitional return to work with nonprofit organizations and make
25 recommendations for improving outcomes. The report must be submitted
26 to the workers' compensation advisory committee by October 31, 2029,
27 for consideration of additional legislation.

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

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

36 (7) No worker shall receive compensation for or during the day on
37 which injury was received or the three days following the same,
38 unless his or her disability shall continue for a period of
39 ((fourteen)) 14 consecutive calendar days from date of injury:
40 PROVIDED, That attempts to return to work in the first ((fourteen))

1 14 days following the injury shall not serve to break the continuity
2 of the period of disability if the disability continues (~~(fourteen)~~)
3 14 days after the injury occurs.

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

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

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

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

22 (b) For dates of injury or disease manifestation after July 1,
23 2008, be less than (~~(fifteen)~~) 15 percent of the average monthly wage
24 in the state as computed under RCW 51.08.018 plus an additional (~~(ten~~
25 ~~dollars)~~) \$10 per month if the worker is married and an additional
26 (~~(ten-dollars)~~) \$10 per month for each child of the worker up to a
27 maximum of five children. However, if the monthly payment computed
28 under this subsection (9)(b) is greater than (~~(one-hundred)~~) 100
29 percent of the wages of the worker as determined under RCW 51.08.178,
30 the monthly payment due to the worker shall be equal to the greater
31 of the monthly wages of the worker or the minimum benefit set forth
32 in this section on June 30, 2008.

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

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

1 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2026."

SSB 5368 - S AMD 513
By Senator Keiser

PULLED 02/01/2024

2 On page 1, line 3 of the title, after "workers;" strike the
3 remainder of the title and insert "amending RCW 51.32.090; creating a
4 new section; and providing an effective date."

EFFECT: (1) Modifies Section 2/RCW 51.32.090 in SSB 5368 to incorporate changes made in 2023 to include attending provider, rather than physician or licensed advanced registered nurse practitioner.

(2) Modifies the legislative intent.

(3) Requires that when an employer requests to the attending provider that the injured worker be certified to perform work other than their usual work, the employer must provide a contemporaneous copy to the worker in their preferred language of a written job description of the work, rather than provide a copy to the worker a statement describing the work; that the attending provider may meet with the worker if the provider has not seen the worker in the prior 21 days; and that the attending provider's determination must be shared with both the worker and employer.

(4) Requires the worker to accept or decline the light duty job offer within seven days after receiving notification that the attending provider has approved the job description and failure to timely accept results in termination of temporary total disability benefits with limited exceptions. Modifies the exception to the ability to reject light duty work with a nonprofit or charity.

(5) Adds charity where nonprofit organization is included.

(6) Modifies the requirements to offer light duty, transitional work with a nonprofit or charity that the employer must contract with an approved return-to-work employment agency or work with a nonprofit or charity active on the Secretary of State's website, rather than established return-to-work employment agency, and requires the Department of Labor and Industries (LNI) to develop the criteria in rule for a return-to-work employment agency to receive department approval.

(7) Requires LNI to work with the vocational rehabilitation advisory committee to: (a) Research, report, and make recommendations to the worker's compensation advisory committee by October 31, 2029, on meaningful return-to-work outcomes and the benefits on workers' mental health; (b) study the quality of the work and benefits to the worker of transitional work with nonprofit organizations.

(8) Makes the act effective January 1, 2026, rather than January 1, 2024.

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