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HOUSE BILL 1521

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State of Washington

68th Legislature

2023 Regular Session

By Representatives Bronoske, Stonier, Wylie, Berry, and Pollet

Read first time 01/23/23. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to industrial insurance self-insured employer and  
2 third-party administrator penalties and duties; amending RCW  
3 51.48.080 and 51.48.017; adding a new section to chapter 51.14 RCW;  
4 creating a new section; and prescribing penalties.

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

6 **Sec. 1.** RCW 51.48.080 and 2020 c 277 s 6 are each amended to  
7 read as follows:

8 (1) Every person, firm, or corporation who violates or fails to  
9 obey, observe, or comply with any statutory provision of this ((act))  
10 title or rule of the department promulgated under authority of this  
11 title, shall be subject to a penalty of not to exceed ((one thousand  
12 dollars)) \$1,000.

13 (2) The department may, for a violation of section 3 of this act,  
14 assess a penalty not to exceed three times the penalties provided in  
15 subsection (1) of this section, including adjustments pursuant to RCW  
16 51.48.095.

17 **Sec. 2.** RCW 51.48.017 and 2020 c 277 s 2 are each amended to  
18 read as follows:

19 (1) Every time a self-insurer unreasonably delays or refuses to  
20 pay benefits as they become due, the self-insurer shall pay a penalty

1 not to exceed the greater of (~~one thousand dollars~~) \$1,000 or  
2 (~~twenty-five~~) 25 percent of: (a) The amount due or (b) each  
3 underpayment made to the claimant. For purposes of this section, "the  
4 amount due" means the total amount of payments due at the time of the  
5 calculation of the penalty.

6 (2) In making the determination of the penalty amount, the  
7 department shall weigh at least the following factors: The amount of  
8 any payment delayed, employer communication of the basis for or  
9 calculation of the payment, history or past practice of underpayments  
10 by the employer, department orders directing the payment, and any  
11 required adjustments to the amount of the payment.

12 (3) The director shall issue an order determining whether there  
13 was an unreasonable delay or refusal to pay benefits and the penalty  
14 amount owed within (~~thirty~~) 30 days upon the request of the  
15 claimant. Such an order shall conform to the requirements of RCW  
16 51.52.050.

17 (4) The penalty shall accrue for the benefit of the claimant and  
18 shall be paid to the claimant with the benefits which may be assessed  
19 under this title.

20 (5) The department may, for a violation of section 3 of this act,  
21 assess a penalty not to exceed three times the penalties provided in  
22 subsection (1) of this section, including adjustments pursuant to RCW  
23 51.48.095.

24 (6) This section applies to all requests for penalties made after  
25 September 1, 2020.

26 NEW SECTION. Sec. 3. A new section is added to chapter 51.14  
27 RCW to read as follows:

28 (1) All self-insured employers and self-insured employers' lay  
29 representative third-party administrators have a duty of good faith  
30 and fair dealing to workers relating to all aspects of this title.

31 (2) An employer violates its duty to the worker if the self-  
32 insured employer or its representative wrongfully induces a worker to  
33 accept less than the compensation due under this title, or otherwise  
34 fails to act in good faith regarding its obligations under this  
35 title. The department must adopt by rule additional applications of  
36 the duty of good faith and fair dealing as well as criteria for  
37 determining appropriate penalties for violation of its duties. In  
38 adopting a rule under this subsection, the department must consider,  
39 among other factors, recognized and approved claim processing

1 practices within the insurance industry, the department's own  
2 experience, and the industrial insurance and insurance laws and rules  
3 of this state.

4 (3) The department must investigate each alleged violation of  
5 this section upon the filing of a written complaint or upon its own  
6 motion. The department must require the employer or its  
7 representative to file a written, substantive response, and such  
8 response is due 15 working days after the department's request. A  
9 department order determining whether a violation has occurred and  
10 conforming with RCW 51.52.050 must be issued within 30 days of a  
11 request for an investigation. An order finding that a violation of  
12 subsection (2) of this section has occurred must also order the  
13 employer to pay a penalty of one to 10 times the average weekly wage  
14 at the time of the order, depending upon the severity of the  
15 violation, which accrues for the benefit of the worker.

16 NEW SECTION. **Sec. 4.** This act applies to all claims regardless  
17 of the date of injury.

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