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HOUSE BILL 1993

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State of Washington

62nd Legislature

2011 Regular Session

By Representative Sells

1 AN ACT Relating to industrial insurance employer wage subsidies and  
2 reimbursements for light duty or transitional work; and reenacting and  
3 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 2007 c 284 s 3 and 2007 c 190 s 1 are  
6 each reenacted and 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 as  
9 the total disability continues.

10 (2) Any compensation payable under this section for children not in  
11 the custody of the injured worker as of the date of injury shall be  
12 payable only to such person as actually is providing the support for  
13 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 earning  
16 power of the worker, at any kind of work, is restored to that existing  
17 at the time of the occurrence of the injury, the payments shall cease.  
18 If and so long as the present earning power is only partially restored,  
19 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) of  
11 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 to  
13 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 of  
18 earning power benefits are calculated upon reopening the claim.

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

25 (b) The employer of injury (~~requests that~~) may provide light duty  
26 or transitional work to a worker who is entitled to temporary total  
27 disability under this chapter (~~be certified by a physician or licensed~~  
28 advanced registered nurse practitioner as able to perform available  
29 work other than his or her usual work,)). The employer or the  
30 department shall obtain from the physician or licensed advanced  
31 registered nurse practitioner a statement confirming the light duty or  
32 transitional work is consistent with the worker's medical restrictions  
33 related to the injury. This statement should be obtained before the  
34 start of the light duty or transitional work unless the worker has  
35 already returned to work with the employer of injury in which case the  
36 statement may be obtained following the start date of the job. The  
37 employer shall furnish to the physician or licensed advanced registered  
38 nurse practitioner, with a copy to the worker, a statement describing

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

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

1 a wage subsidy for a day in which the worker did not actually perform  
2 any work, regardless of whether or not the employer paid the worker  
3 wages for that day.

4 (d) If an employer offers a worker work pursuant to this subsection  
5 (4) and the worker must be provided with training or instruction to be  
6 qualified to perform the offered work, the employer shall be eligible  
7 for a reimbursement from the department for any tuition, books, fees,  
8 and materials required for that training or instruction, up to a  
9 maximum of one thousand dollars. Reimbursing an employer for the costs  
10 of such training or instruction does not constitute a determination by  
11 the department that the worker is eligible for vocational services  
12 authorized by RCW 51.32.095 and 51.32.099.

13 (e) If an employer offers a worker work pursuant to this subsection  
14 (4), and the employer provides the worker with clothing that is  
15 necessary to allow the worker to perform the offered work, the employer  
16 shall be eligible for reimbursement for such clothing from the  
17 department, up to a maximum of four hundred dollars: PROVIDED,  
18 HOWEVER, That an employer shall not receive reimbursement for any  
19 clothing it provided to the worker that it normally provides to its  
20 workers. The clothing purchased for the worker shall become the  
21 worker's property once the work comes to an end.

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

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

1       (h) An employer shall not receive any wage subsidies or  
2 reimbursement of any expenses pursuant to this subsection (4) unless  
3 the employer has completed and submitted the reimbursement request on  
4 forms developed by the department, along with all related information  
5 required by department rules. No wage subsidy or reimbursement shall  
6 be paid to an employer who fails to submit a form for such payment  
7 within one year of the date the work was performed. In no event shall  
8 an employer receive wage subsidy payments or reimbursements of any  
9 expenses pursuant to this subsection (4) unless the worker's physician  
10 or licensed advanced registered nurse practitioner has restricted him  
11 or her from performing his or her usual work and the worker's physician  
12 or licensed advanced registered nurse practitioner has released him or  
13 her to perform the work offered.

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

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

27       ~~((e))~~ (k) If the worker returns to work under this subsection  
28 (4), any employee health and welfare benefits that the worker was  
29 receiving at the time of injury shall continue or be resumed at the  
30 level provided at the time of injury. Such benefits shall not be  
31 continued or resumed if to do so is inconsistent with the terms of the  
32 benefit program, or with the terms of the collective bargaining  
33 agreement currently in force.

34       ~~((d))~~ (l) In the event of any dispute as to the validity of the  
35 work offered or as to the worker's ability to perform the available  
36 work offered by the employer, the department shall make the final  
37 determination pursuant to an order that contains the notice required by  
38 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

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

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

9       (7) No worker shall receive compensation for or during the day on  
10 which injury was received or the three days following the same, unless  
11 his or her disability shall continue for a period of fourteen  
12 consecutive calendar days from date of injury: PROVIDED, That attempts  
13 to return to work in the first fourteen days following the injury shall  
14 not serve to break the continuity of the period of disability if the  
15 disability continues fourteen days after the injury occurs.

16       ~~((+6))~~ (8) Should a worker suffer a temporary total disability and  
17 should his or her employer at the time of the injury continue to pay  
18 him or her the wages which he or she was earning at the time of such  
19 injury, such injured worker shall not receive any payment provided in  
20 subsection (1) of this section during the period his or her employer  
21 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,  
22 sick leave, or other similar benefits shall not be deemed to be  
23 payments by the employer for the purposes of this subsection.

24       ~~((+7))~~ (9) In no event shall the monthly payments provided in this  
25 section:

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

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

33       (b) For dates of injury or disease manifestation after July 1,  
34 2008, be less than fifteen percent of the average monthly wage in the  
35 state as computed under RCW 51.08.018 plus an additional ten dollars

1 per month if the worker is married and an additional ten dollars per  
2 month for each child of the worker up to a maximum of five children.  
3 However, if the monthly payment computed under this subsection (~~(+7)~~)  
4 (9)(b) is greater than one hundred percent of the wages of the worker  
5 as determined under RCW 51.08.178, the monthly payment due to the  
6 worker shall be equal to the greater of the monthly wages of the worker  
7 or the minimum benefit set forth in this section on June 30, 2008.  
8 ~~(+8)~~ (10) If the supervisor of industrial insurance determines  
9 that the worker is voluntarily retired and is no longer attached to the  
10 workforce, benefits shall not be paid under this section.

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