
HOUSE BILL 2407

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Roberts, Green, Ormsby, Reykdal, Moeller, Upthegrove, and Maxwell

Read first time 01/13/12. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to claims resolution structured settlement
2 agreements; amending RCW 51.04.063; and reenacting and amending RCW
3 42.56.230.

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

5 **Sec. 1.** RCW 42.56.230 and 2011 c 350 s 2 and 2011 c 173 s 1 are
6 each reenacted and amended to read as follows:

7 The following personal information is exempt from public inspection
8 and copying under this chapter:

9 (1) Personal information in any files maintained for students in
10 public schools, patients or clients of public institutions or public
11 health agencies, or welfare recipients;

12 (2) Personal information((~~r~~)) including, but not limited to,
13 addresses, telephone numbers, personal electronic mail addresses,
14 social security numbers, emergency contact and date of birth
15 information for a participant in a public or nonprofit program serving
16 or pertaining to children, adolescents, or students, including but not
17 limited to early learning or child care services, parks and recreation
18 programs, youth development programs, and after-school programs.

1 Emergency contact information may be provided to appropriate
2 authorities and medical personnel for the purpose of treating the
3 individual during an emergency situation;

4 (3) Personal information in files maintained for employees,
5 appointees, or elected officials of any public agency to the extent
6 that disclosure would violate their right to privacy;

7 (4) Information required of any taxpayer in connection with the
8 assessment or collection of any tax if the disclosure of the
9 information to other persons would: (a) Be prohibited to such persons
10 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
11 authorized under RCW 35.102.145; or (b) violate the taxpayer's right to
12 privacy or result in unfair competitive disadvantage to the taxpayer;

13 (5) Credit card numbers, debit card numbers, electronic check
14 numbers, card expiration dates, or bank or other financial account
15 numbers, except when disclosure is expressly required by or governed by
16 other law;

17 (6) Personal and financial information related to a small loan or
18 any system of authorizing a small loan in RCW 31.45.093; (~~and~~)

19 (7)(a) Documents and related materials and scanned images of
20 documents and related materials used to prove identity, age,
21 residential address, social security number, or other personal
22 information required to apply for a driver's license or identicard.

23 (b) Information provided under RCW 46.20.111 that indicates that an
24 applicant declined to register with the selective service system; and

25 (8) All information related to individual claims resolution
26 structured settlement agreements under RCW 51.04.063, other than final
27 orders from the board of industrial insurance appeals.

28 **Sec. 2.** RCW 51.04.063 and 2011 1st sp.s. c 37 s 302 are each
29 amended to read as follows:

30 (1) Notwithstanding RCW 51.04.060 or any other provision of this
31 title, beginning on January 1, 2012, an injured worker who is at least
32 fifty-five years of age on or after January 1, 2012, fifty-three years
33 of age on or after January 1, 2015, or fifty years of age on or after
34 January 1, 2016, may choose from the following: (a) To continue to
35 receive all benefits for which they are eligible under this title, (b)
36 to participate in vocational training if eligible, or (c) to initiate
37 and agree to a resolution of their claim with a structured settlement.

1 (2)(a) As provided in this section, the parties to an allowed claim
2 may initiate and agree to resolve a claim with a structured settlement
3 for all benefits other than medical. Parties as defined in (b) of this
4 subsection may only initiate claim resolution structured settlements if
5 at least one hundred eighty days have passed since the claim was
6 received by the department or self-insurer and the order allowing the
7 claim is final and binding. All requirements of this title regarding
8 entitlement to and payment of benefits will apply during this period.
9 All claim resolution structured settlement agreements must be approved
10 by the board of industrial insurance appeals.

11 (b) For purposes of this section, "parties" means:

12 (i) For a state fund claim, the worker, the employer, and the
13 department. The employer will not be a party if the costs of the claim
14 or claims are no longer included in the calculation of the employer's
15 experience factor used to determine premiums, if they cannot be
16 located, are no longer in business, or they fail to respond or decline
17 to participate after timely notice of the claim resolution settlement
18 process provided by the board and the department.

19 (ii) For a self-insured claim, the worker and the employer.

20 (c) The claim resolution structured settlement agreements shall:

21 (i) Bind the parties with regard to all aspects of a claim except
22 medical benefits unless revoked by one of the parties as provided in
23 subsection (6) of this section;

24 (ii) Provide a periodic payment schedule to the worker equal to at
25 least twenty-five percent but not more than one hundred fifty percent
26 of the average monthly wage in the state pursuant to RCW 51.08.018,
27 except for the initial payment which may be up to six times the average
28 monthly wage in the state pursuant to RCW 51.08.018;

29 (iii) Not set aside or reverse an allowance order;

30 (iv) Not subject any employer who is not a signatory to the
31 agreement to any responsibility or burden under any claim; and

32 (v) Not subject any funds covered under this title to any
33 responsibility or burden without prior approval from the director or
34 designee.

35 (d) For state fund claims, the department shall negotiate the claim
36 resolution structured settlement agreement with the worker or their
37 representative and with the employer or employers and their
38 representative or representatives.

1 (e) For self-insured claims, the self-insured employer shall
2 negotiate the agreement with the worker or their representative.
3 Workers of self-insured employers who are unrepresented may request
4 that the office of the ombudsman for self-insured injured workers
5 provide assistance or be present during negotiations.

6 (f) Terms of the agreement may include the parties' agreement that
7 the claim shall remain open for future necessary medical or surgical
8 treatment related to the injury where there is a reasonable expectation
9 such treatment is necessary. The parties may also agree that specific
10 future treatment shall be provided without the application required in
11 RCW 51.32.160.

12 (g) Any claim resolution structured settlement agreement entered
13 into under this section must be in writing and signed by the parties or
14 their representatives and must clearly state that the parties
15 understand and agree to the terms of the agreement.

16 (h) If a worker is not represented by an attorney at the time of
17 signing a claim resolution structured settlement agreement, the parties
18 must forward a copy of the signed agreement to the board with a request
19 for a conference with an industrial appeals judge. The industrial
20 appeals judge must schedule a conference with all parties within
21 fourteen days for the purpose of (i) reviewing the terms of the
22 proposed settlement agreement by the parties; and (ii) ensuring the
23 worker has an understanding of the benefits generally available under
24 this title and that a claim resolution structured settlement agreement
25 may alter the benefits payable on the claim or claims. The judge may
26 schedule the initial conference for a later date with the consent of
27 the parties.

28 (i) Before approving the agreement, the industrial appeals judge
29 shall ensure the worker has an adequate understanding of the agreement
30 and its consequences to the worker.

31 (j) The industrial appeals judge may approve a claim resolution
32 structured settlement agreement only if the judge finds that the
33 agreement is in the best interest of the worker. When determining
34 whether the agreement is in the best interest of the worker, the
35 industrial appeals judge shall consider the following factors, taken as
36 a whole, with no individual factor being determinative:

37 (i) The nature and extent of the injuries and disabilities of the
38 worker;

1 (ii) The age and life expectancy of the injured worker;

2 (iii) Other benefits the injured worker is receiving or is entitled
3 to receive and the effect a claim resolution structured settlement
4 agreement might have on those benefits; and

5 (iv) The marital or domestic partnership status of the injured
6 worker.

7 (k) Within seven days after the conference, the industrial appeals
8 judge shall issue an order allowing or rejecting the claim resolution
9 structured settlement agreement. There is no appeal from the
10 industrial appeals judge's decision.

11 (l) If the industrial appeals judge issues an order allowing the
12 claim resolution structured settlement agreement, the order must be
13 submitted to the board.

14 (3) Upon receiving the agreement, the board shall approve it within
15 thirty working days of receipt unless it finds that:

16 (a) The parties have not entered into the agreement knowingly and
17 willingly;

18 (b) The agreement does not meet the requirements of a claim
19 resolution structured settlement agreement;

20 (c) The agreement is the result of a material misrepresentation of
21 law or fact;

22 (d) The agreement is the result of harassment or coercion; or

23 (e) The agreement is unreasonable as a matter of law.

24 (4) If a worker is represented by an attorney at the time of
25 signing a claim resolution structured settlement agreement, the parties
26 shall submit the agreement directly to the board without the conference
27 described in this section.

28 (5) If the board approves the agreement, it shall provide notice to
29 all parties. The department shall place the agreement in the
30 applicable claim file or files.

31 (6) A party may revoke consent to the claim resolution structured
32 settlement agreement by providing written notice to the other parties
33 and the board within thirty days after the date the agreement is
34 approved by the board.

35 (7) To the extent the worker is entitled to any benefits while a
36 claim resolution structured settlement agreement is being negotiated or
37 during the revocation period of an agreement, the benefits must be paid

1 pursuant to the requirements of this title until the agreement becomes
2 final.

3 (8) A claim resolution structured settlement agreement that meets
4 the conditions in this section and that has become final and binding as
5 provided in this section is binding on all parties to the agreement as
6 to its terms and the injuries and occupational diseases to which the
7 agreement applies. A claim resolution structured settlement agreement
8 that has become final and binding is not subject to appeal.

9 (9) All payments made to a worker pursuant to a final claim
10 resolution structured settlement agreement must be reported to the
11 department as claims costs pursuant to this title. If a self-insured
12 employer contracts with a third-party administrator for claim services
13 and the payment of benefits under this title, the third-party
14 administrator shall also disburse the structured settlement payments
15 pursuant to the agreement.

16 (10) Claims closed pursuant to a claim resolution structured
17 settlement agreement can be reopened pursuant to RCW 51.32.160 for
18 medical treatment only. Further temporary total, temporary partial,
19 permanent partial, or permanent total benefits are not payable under
20 the same claim or claims for which a claim resolution structured
21 settlement agreement has been approved by the board and has become
22 final.

23 (11) Parties aggrieved by the failure of any other party to comply
24 with the terms of a claim resolution structured settlement agreement
25 have one year from the date of failure to comply to petition to the
26 board. If the board determines that a party has failed to comply with
27 an agreement, they will order compliance and will impose a penalty
28 payable to the aggrieved party of up to twenty-five percent of the
29 monetary amount unpaid at the time the petition for noncompliance was
30 filed. The board will also decide on any disputes as to attorneys'
31 fees for services related to claim resolution structured settlement
32 agreements.

33 (12) Parties and their representatives may not use settlement
34 offers or the claim resolution structured settlement agreement process
35 to harass or coerce any party. If the department determines that an
36 employer has engaged in a pattern of harassment or coercion, the
37 employer may be subject to penalty or corrective action, and may be

1 removed from the retrospective rating program or be decertified from
2 self-insurance under RCW 51.14.030.

3 (13) All information related to individual claims resolution
4 structured settlement agreements, other than final orders from the
5 board of industrial insurance appeals, is private and exempt from
6 disclosure under chapter 42.56 RCW.

7 (14) Information gathered during the claims resolution structured
8 settlement agreement process, including but not limited to forms filled
9 out by the parties and testimony before the board of industrial
10 insurance appeals, is a statement made in the course of compromise
11 negotiations and is inadmissible in any future litigation.

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