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ENGROSSED SUBSTITUTE SENATE BILL 5128

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State of Washington

63rd Legislature

2013 Regular Session

By Senate Commerce & Labor (originally sponsored by Senators Holmquist Newbry, Braun, King, Baumgartner, Sheldon, Rivers, Ericksen, Benton, Litzow, Becker, Dammeier, Smith, Hill, Bailey, Honeyford, Tom, Schoesler, Parlette, Padden, and Hewitt)

READ FIRST TIME 01/29/13.

1 AN ACT Relating to compensation for injured workers; amending RCW  
2 51.32.090; adding new sections to chapter 51.04 RCW; creating a new  
3 section; and repealing RCW 51.04.063, 51.04.065, and 51.04.069.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.04 RCW  
6 to read as follows:

7 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of this  
8 title, beginning September 1, 2013, the parties to an allowed claim for  
9 benefits may enter into a voluntary settlement agreement as provided in  
10 this section with respect to one or more allowed claims for benefits  
11 under this title. All voluntary settlement agreements must be approved  
12 by the board of industrial insurance appeals. The voluntary settlement  
13 agreement may:

14 (i) Resolve a claim for all benefits other than medical;

15 (ii) Not subject any employer who is not a signatory to the  
16 agreement to any responsibility or burden under any claim; and

17 (iii) Not be initiated until at least one hundred eighty days have  
18 passed since the claim was received by the department or self-insurer  
19 and the order allowing the claim is final and binding.

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

2 (i) For a self-insured claim, the worker and the employer; and

3 (ii) For a state fund claim, the worker, the employer, and the  
4 department.

5 (c) For state fund claims, the department shall negotiate the  
6 settlement with the worker. Any voluntary settlement agreement entered  
7 into under this section must be signed by the parties or their  
8 representatives and must clearly state that the parties understand and  
9 agree to the terms of the voluntary settlement agreement. Unless one  
10 of the parties revokes consent to the agreement, as provided in  
11 subsection (3) of this section, the voluntary settlement agreement  
12 becomes final and binding thirty days after approval of the agreement  
13 by the board of industrial insurance appeals.

14 (d) A voluntary settlement agreement that has become final and  
15 binding as provided in this section is binding on the department and on  
16 all parties to the agreement as to its terms and the injuries and  
17 occupational diseases to which the voluntary settlement applies. A  
18 voluntary settlement agreement that has become final and binding is not  
19 subject to appeal.

20 (2)(a) If a worker is not represented by an attorney at the time of  
21 signing a voluntary settlement agreement, the parties must forward a  
22 copy of the signed settlement agreement to the board with a request for  
23 a conference with a settlement officer. Unless one of the parties  
24 requests a later date, the settlement officer must convene a conference  
25 within fourteen days after receipt of the request for the limited  
26 purpose of receiving the voluntary settlement agreement of the parties,  
27 explaining to the worker the benefits generally available under this  
28 title, and explaining that a voluntary settlement agreement may alter  
29 the benefits payable on a claim. In no event may a settlement officer  
30 render legal advice to any party.

31 (b) Before approving the settlement agreement, the settlement  
32 officer shall ensure that the worker has an adequate understanding of  
33 the settlement proposal and its consequences to the worker.

34 (c)(i) The settlement officer may approve a settlement agreement  
35 only if the officer finds that the settlement is in the best interest  
36 of the worker. When determining whether the settlement is in the best  
37 interest of the worker, the settlement officer shall consider the

1 following factors, taken as a whole, with no individual factor being  
2 determinative:

3 (A) The nature and extent of the injuries and disabilities of the  
4 worker;

5 (B) The age and life expectancy of the injured worker;

6 (C) Whether the injured worker has any health, disability, or  
7 related insurance;

8 (D) Any other benefits the injured worker is receiving or is  
9 entitled to receive and the effect a settlement agreement might have on  
10 those benefits;

11 (E) The marital status of the injured worker; and

12 (F) The number of dependents of the injured worker.

13 (ii) Within seven days after the conference, the settlement officer  
14 shall issue an order allowing or rejecting the voluntary settlement  
15 agreement. There is no appeal from the settlement officer's decision.

16 (d) If the settlement officer issues an order allowing the  
17 voluntary settlement agreement, the order must be submitted to the  
18 board.

19 (3) If a worker is represented by an attorney at the time of  
20 signing a voluntary settlement agreement, the parties may submit the  
21 agreement directly to the board without the conference described in  
22 this section.

23 (4) Upon receiving the voluntary settlement agreement, the board  
24 shall approve the agreement within thirty working days of receipt  
25 unless it finds that the parties have not entered into the agreement  
26 knowingly and willingly. If the board approves the agreement, it shall  
27 provide notice to the department of the binding terms of the agreement  
28 and provide for placement of the agreement in the applicable claim  
29 files.

30 (5) A party may revoke consent to the voluntary settlement  
31 agreement by providing written notice to the other parties and the  
32 board within thirty days after the date the agreement is approved by  
33 the board.

34 (6) To the extent the worker is found to be entitled to temporary  
35 total disability or permanent total disability benefits while a  
36 voluntary settlement agreement is being negotiated, or during the  
37 revocation period of an agreement, the benefits must be paid until the  
38 agreement becomes final.

1 (7) A claim closed pursuant to a voluntary settlement agreement can  
2 be reopened only upon a showing of worsening of the related medical  
3 conditions under RCW 51.32.160 for medical treatment only. Further  
4 temporary total, temporary partial, permanent partial, or permanent  
5 total benefits are not payable under the same claim for which a  
6 voluntary settlement has been approved by the board.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.04 RCW  
8 to read as follows:

9 (1) In calendar years 2016, 2021, and 2026, the department shall  
10 contract for an independent study of voluntary settlement agreements  
11 approved by the board under this section. The study must be performed  
12 by a researcher that has experience in workers' compensation systems.  
13 When selecting the independent researcher, the department shall consult  
14 with the workers' compensation advisory committee. The study must  
15 evaluate the quality and effectiveness of settlement agreements of  
16 state fund and self-insured claims, provide information on the impact  
17 of settlement agreements to the state fund and to self-insured  
18 employers, and evaluate the outcomes of workers who have settled their  
19 claims. The study must be submitted to the appropriate committees of  
20 the legislature.

21 (2) The department shall contract for an independent study of the  
22 return to work provisions under RCW 51.32.090. The study must be  
23 performed by a researcher that has experience in workers' compensation  
24 systems. When selecting the independent researcher, the department  
25 shall consult with the workers' compensation advisory committee. The  
26 study must evaluate the quality and effectiveness of the return to work  
27 program and whether the program is being utilized by employers, and  
28 evaluate the outcomes of workers participating in the program. The  
29 study must be submitted to the appropriate committees of the  
30 legislature by December 2016.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.04 RCW  
32 to read as follows:

33 The department must maintain copies of all voluntary settlement  
34 agreements entered into between the parties and develop processes under  
35 RCW 51.28.070 to furnish copies of such agreements to any party  
36 contemplating any subsequent voluntary settlement agreement with the

1 worker on any claim. The department shall also furnish claims  
2 histories that include all prior permanent disability awards received  
3 by the worker on any claims by body part and category or percentage  
4 rating, as applicable. Copies of such agreements and claims histories  
5 shall be furnished within ten working days of a written request. An  
6 employer may not consider a prior settlement agreement or claims  
7 history when making a decision about hiring or the terms or conditions  
8 of employment.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.04 RCW  
10 to read as follows:

11 If a worker has received a prior award of, or entered into a  
12 voluntary settlement for, total or partial permanent disability  
13 benefits, it shall be conclusively presumed that the medical condition  
14 causing the prior permanent disability exists and is disabling at the  
15 time of any subsequent industrial injury or occupational disease.  
16 Except in the case of total permanent disability, the accumulation of  
17 all permanent disability awards issued with respect to any one part of  
18 the body in favor of the worker may not exceed one hundred percent over  
19 the worker's lifetime. When entering into a voluntary settlement  
20 agreement under this chapter, the department or self-insured employer  
21 may exclude amounts paid to settle claims for prior portions of a  
22 worker's permanent total or partial disability.

23 **Sec. 5.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each  
24 amended to read as follows:

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

28 (2) Any compensation payable under this section for children not in  
29 the custody of the injured worker as of the date of injury shall be  
30 payable only to such person as actually is providing the support for  
31 such child or children pursuant to the order of a court of record  
32 providing for support of such child or children.

33 (3)(a) As soon as recovery is so complete that the present earning  
34 power of the worker, at any kind of work, is restored to that existing  
35 at the time of the occurrence of the injury, the payments shall cease.

1 If and so long as the present earning power is only partially restored,  
2 the payments shall:

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

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

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

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

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

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

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

26 (c) To further encourage employers to maintain the employment of  
27 their injured workers, an employer insured with the department and that  
28 offers work to a worker pursuant to this subsection (4) shall be  
29 eligible for reimbursement of the injured worker's wages for light duty  
30 or transitional work equal to fifty percent of the basic, gross wages  
31 paid for that work, for a maximum of sixty-six work days within a  
32 consecutive twenty-four month period. In no event may the wage  
33 subsidies paid to an employer on a claim exceed ten thousand dollars.  
34 Wage subsidies shall be calculated using the worker's basic hourly  
35 wages or basic salary, and no subsidy shall be paid for any other form  
36 of compensation or payment to the worker such as tips, commissions,  
37 bonuses, board, housing, fuel, health care, dental care, vision care,  
38 per diem, reimbursements for work-related expenses, or any other

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

5 (d) If an employer insured with the department offers a worker work  
6 pursuant to this subsection (4) and the worker must be provided with  
7 training or instruction to be qualified to perform the offered work,  
8 the employer shall be eligible for a reimbursement from the department  
9 for any tuition, books, fees, and materials required for that training  
10 or instruction, up to a maximum of one thousand dollars. Reimbursing  
11 an employer for the costs of such training or instruction does not  
12 constitute a determination by the department that the worker is  
13 eligible for vocational services authorized by RCW 51.32.095 and  
14 51.32.099.

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

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

35 (g) An employer may offer work to a worker pursuant to this  
36 subsection (4) more than once, but in no event may the employer receive  
37 wage subsidies for more than sixty-six days of work in a consecutive  
38 twenty-four month period under one claim. An employer may continue to



1 offer work pursuant to this subsection (4) after the worker has  
2 performed sixty-six days of work, but the employer shall not be  
3 eligible to receive wage subsidies for such work.

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

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

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

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

36 (l) In the event of any dispute as to the validity of the work  
37 offered or as to the worker's ability to perform the available work

1 offered by the employer, the department shall make the final  
2 determination pursuant to an order that contains the notice required by  
3 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

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

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

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

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

27 (9) In no event shall the monthly payments provided in this  
28 section:

29 (a) Exceed the applicable percentage of the average monthly wage in  
30 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%

1 (b) For dates of injury or disease manifestation after July 1,  
2 2008, be less than fifteen percent of the average monthly wage in the  
3 state as computed under RCW 51.08.018 plus an additional ten dollars  
4 per month if the worker is married and an additional ten dollars per  
5 month for each child of the worker up to a maximum of five children.  
6 However, if the monthly payment computed under this subsection (9)(b)  
7 is greater than one hundred percent of the wages of the worker as  
8 determined under RCW 51.08.178, the monthly payment due to the worker  
9 shall be equal to the greater of the monthly wages of the worker or the  
10 minimum benefit set forth in this section on June 30, 2008.

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

14 (11) The department shall adopt rules as necessary to implement  
15 this section.

16 NEW SECTION. **Sec. 6.** The department of labor and industries may  
17 adopt rules to implement this act.

18 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each  
19 repealed:

20 (1) RCW 51.04.063 (Injured worker options--Claim resolution  
21 structured settlement agreements) and 2011 1st sp.s. c 37 s 302;

22 (2) RCW 51.04.065 (Claim resolution structured settlement  
23 agreements--Availability of copies) and 2011 1st sp.s. c 37 s 303; and

24 (3) RCW 51.04.069 (Claim resolution structured settlement  
25 agreements--Reports and studies) and 2011 1st sp.s. c 37 s 306.

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