
SUBSTITUTE SENATE BILL 5128

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) Bind the parties with regard to any or all aspects of an
15 allowed claim including, but not limited to, monetary payment,
16 vocational services, and claim closure;

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

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

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

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

6 (ii) For a state fund claim, the worker, the employer, and the
7 department.

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

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

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

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

37 (c)(i) The settlement officer may approve a settlement agreement
38 only if the officer finds that the settlement is in the best interest

1 of the worker. When determining whether the settlement is in the best
2 interest of the worker, the settlement officer shall consider the
3 following factors, taken as a whole, with no individual factor being
4 determinative:

5 (A) The nature and extent of the injuries and disabilities of the
6 worker;

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

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

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

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

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

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

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

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

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

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

36 (6) To the extent the worker is found to be entitled to temporary
37 total disability or permanent total disability benefits while a

1 voluntary settlement agreement is being negotiated, or during the
2 revocation period of an agreement, the benefits must be paid until the
3 agreement becomes final.

4 (7) When future liability for medical benefits is released or
5 otherwise relinquished in a settlement agreement under this section,
6 any monetary compensation for medical benefits must be dispensed
7 pursuant to a schedule of payments as established in the settlement
8 agreement. The schedule of payments must be reasonably calculated to
9 provide the injured worker with periodic payments throughout the
10 expected time during which the worker will need medical treatment.

11 (8) A claim closed pursuant to a voluntary settlement agreement can
12 be reopened only upon a showing of worsening of the related medical
13 conditions under RCW 51.32.160 for medical treatment only. Further
14 temporary total, temporary partial, permanent partial, or permanent
15 total benefits are not payable under the same claim for which a
16 voluntary settlement has been approved by the board.

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

19 (1) In calendar years 2016, 2021, and 2026, the department shall
20 contract for an independent study of voluntary settlement agreements
21 approved by the board under this section. The study must be performed
22 by a researcher that has experience in workers' compensation systems.
23 When selecting the independent researcher, the department shall consult
24 with the workers' compensation advisory committee. The study must
25 evaluate the quality and effectiveness of settlement agreements of
26 state fund and self-insured claims, provide information on the impact
27 of settlement agreements to the state fund and to self-insured
28 employers, and evaluate the outcomes of workers who have settled their
29 claims. The study must be submitted to the appropriate committees of
30 the legislature.

31 (2) The department shall contract for an independent study of the
32 return to work provisions under RCW 51.32.090. The study must be
33 performed by a researcher that has experience in workers' compensation
34 systems. When selecting the independent researcher, the department
35 shall consult with the workers' compensation advisory committee. The
36 study must evaluate the quality and effectiveness of the return to work
37 program and whether the program is being utilized by employers, and

1 evaluate the outcomes of workers participating in the program. The
2 study must be submitted to the appropriate committees of the
3 legislature by December 2016.

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

6 The department must maintain copies of all voluntary settlement
7 agreements entered into between the parties and develop processes under
8 RCW 51.28.070 to furnish copies of such agreements to any party
9 contemplating any subsequent voluntary settlement agreement with the
10 worker on any claim. The department shall also furnish claims
11 histories that include all prior permanent disability awards received
12 by the worker on any claims by body part and category or percentage
13 rating, as applicable. Copies of such agreements and claims histories
14 shall be furnished within ten working days of a written request. An
15 employer may not consider a prior settlement agreement or claims
16 history when making a decision about hiring or the terms or conditions
17 of employment.

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

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

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

34 (1) When the total disability is only temporary, the schedule of

1 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
2 the total disability continues.

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

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

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

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

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

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

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

37 (b) (~~Whenever~~) The employer of injury (~~requests that~~) may
38 provide light duty or transitional work to a worker who is entitled to

1 temporary total disability under this chapter (~~be certified by a~~
2 ~~physician or licensed advanced registered nurse practitioner as able to~~
3 ~~perform available work other than his or her usual work,~~). The
4 employer or the department shall obtain from the physician or licensed
5 advanced registered nurse practitioner a statement confirming the light
6 duty or transitional work is consistent with the worker's medical
7 restrictions related to the injury. This statement should be obtained
8 before the start of the light duty or transitional work unless the
9 worker has already returned to work with the employer of injury in
10 which case the statement may be obtained following the start date of
11 the job. The employer shall furnish to the physician or licensed
12 advanced registered nurse practitioner, with a copy to the worker, a
13 statement describing the work (~~available~~) with the employer of injury
14 in terms that will enable the physician or licensed advanced registered
15 nurse practitioner to relate the physical activities of the job to the
16 worker's disability. The physician or licensed advanced registered
17 nurse practitioner shall (~~then determine~~) confirm whether the worker
18 is physically able to perform the work described. The worker's
19 temporary total disability payments shall (~~continue until the worker~~
20 ~~is released by his or her physician or licensed advanced registered~~
21 ~~nurse practitioner for the work, and begins the work with the employer~~
22 ~~of injury. If~~) stop effective the date the light duty or transitional
23 job starts. Temporary total disability payments shall resume if the
24 work thereafter comes to an end before the worker's recovery is
25 sufficient in the judgment of his or her physician or licensed advanced
26 registered nurse practitioner to permit him or her to return to his or
27 her usual job, or to perform other available work offered by the
28 employer of injury(~~, the worker's temporary total disability payments~~
29 ~~shall be resumed~~). Should the available work described, once
30 undertaken by the worker, impede his or her recovery to the extent that
31 in the judgment of his or her physician or licensed advanced registered
32 nurse practitioner he or she should not continue to work, the worker's
33 temporary total disability payments shall be resumed when the worker
34 ceases such work at the direction of the physician or licensed advanced
35 registered nurse practitioner.

36 (c) To further encourage employers to maintain the employment of
37 their injured workers, an employer insured with the department and that
38 offers work to a worker pursuant to this subsection (4) shall be

1 eligible for reimbursement of the injured worker's wages for light duty
2 or transitional work equal to fifty percent of the basic, gross wages
3 paid for that work, for a maximum of sixty-six work days within a
4 consecutive twenty-four month period. In no event may the wage
5 subsidies paid to an employer on a claim exceed ten thousand dollars.
6 Wage subsidies shall be calculated using the worker's basic hourly
7 wages or basic salary, and no subsidy shall be paid for any other form
8 of compensation or payment to the worker such as tips, commissions,
9 bonuses, board, housing, fuel, health care, dental care, vision care,
10 per diem, reimbursements for work-related expenses, or any other
11 payments. An employer may not, under any circumstances, receive a wage
12 subsidy for a day in which the worker did not actually perform any
13 work, regardless of whether or not the employer paid the worker wages
14 for that day.

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

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

34 (f) If an employer insured with the department offers a worker work
35 pursuant to this subsection (4) and the worker must be provided with
36 tools or equipment to perform the offered work, the employer shall be
37 eligible for a reimbursement from the department for such tools and
38 equipment and related costs as determined by department rule, up to a

1 maximum of two thousand five hundred dollars. An employer shall not be
2 reimbursed for any tools or equipment purchased prior to offering the
3 work to the worker pursuant to this subsection (4). An employer shall
4 not be reimbursed for any tools or equipment that it normally provides
5 to its workers. The tools and equipment shall be the property of the
6 employer.

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

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

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

30 (j) Once the worker returns to work under the terms of this
31 subsection (4), he or she shall not be assigned by the employer to work
32 other than the available work described without the worker's written
33 consent, or without prior review and approval by the worker's physician
34 or licensed advanced registered nurse practitioner. An employer who
35 directs a claimant to perform work other than that approved by the
36 attending physician and without the approval of the worker's physician
37 or licensed advanced registered nurse practitioner shall not receive
38 any wage subsidy or other reimbursements for such work.

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

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

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

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

21 (7) No worker shall receive compensation for or during the day on
22 which injury was received or the three days following the same, unless
23 his or her disability shall continue for a period of fourteen
24 consecutive calendar days from date of injury: PROVIDED, That attempts
25 to return to work in the first fourteen days following the injury shall
26 not serve to break the continuity of the period of disability if the
27 disability continues fourteen days after the injury occurs.

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

36 (9) In no event shall the monthly payments provided in this
37 section:

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

3 AFTER PERCENTAGE

4 June 30, 1993	105%
5 June 30, 1994	110%
6 June 30, 1995	115%
7 June 30, 1996	120%

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

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

21 (11) The department shall adopt rules as necessary to implement
22 this section.

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

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

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

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

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

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