

**ESSB 5127 - S AMD 410**

By Senators Holmquist Newbry, Braun

ADOPTED 01/29/2014

1 Beginning on page 1, line 5, strike all of section 1 and insert the  
2 following:

3 "Sec. 1. RCW 51.04.063 and 2013 c 23 s 104 are each amended to  
4 read as follows:

5 (1) Notwithstanding RCW 51.04.060 or any other provision of this  
6 title, (~~beginning on January 1, 2012,~~) an injured worker (~~who is at~~  
7 ~~least fifty five years of age on or after January 1, 2012, fifty three~~  
8 ~~years of age on or after January 1, 2015, or fifty years of age on or~~  
9 ~~after January 1, 2016,~~) may choose from the following: (a) To  
10 continue to receive all benefits for which they are eligible under this  
11 title, (b) to participate in vocational training if eligible, or (c) to  
12 initiate and agree to a resolution of their claim with a structured  
13 settlement.

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

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

25 (i) For a state fund claim, the worker, the employer, and the  
26 department. The employer will not be a party if the costs of the claim  
27 or claims are no longer included in the calculation of the employer's  
28 experience factor used to determine premiums, if they cannot be  
29 located, are no longer in business, or they fail to respond or decline

1 to participate after timely notice of the claim resolution settlement  
2 process provided by the board and the department.

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

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

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

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

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

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

16 (v) Not subject any funds covered under this title to any  
17 responsibility or burden without prior approval from the director or  
18 designee.

19 (d) For state fund claims, the department shall negotiate the claim  
20 resolution structured settlement agreement with the worker or their  
21 representative and with the employer or employers and their  
22 representative or representatives.

23 (e) For self-insured claims, the self-insured employer shall  
24 negotiate the agreement with the worker or his or her representative.  
25 Workers of self-insured employers who are unrepresented may request  
26 that the office of the ombuds for self-insured injured workers provide  
27 assistance or be present during negotiations.

28 (f) Terms of the agreement may include the parties' agreement that  
29 the claim shall remain open for future necessary medical or surgical  
30 treatment related to the injury where there is a reasonable expectation  
31 such treatment is necessary. The parties may also agree that specific  
32 future treatment shall be provided without the application required in  
33 RCW 51.32.160.

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

1 (h) If a worker is not represented by an attorney at the time of  
2 signing a claim resolution structured settlement agreement, the parties  
3 must forward a copy of the signed agreement to the board with a request  
4 for a conference with an industrial appeals judge. The industrial  
5 appeals judge must schedule a conference with all parties within  
6 fourteen days for the purpose of (i) reviewing the terms of the  
7 proposed settlement agreement by the parties; and (ii) ensuring the  
8 worker has an understanding of the benefits generally available under  
9 this title and that a claim resolution structured settlement agreement  
10 may alter the benefits payable on the claim or claims. The judge may  
11 schedule the initial conference for a later date with the consent of  
12 the parties.

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

16 (j) The industrial appeals judge may approve a claim resolution  
17 structured settlement agreement only if the judge finds that the  
18 agreement is in the best interest of the worker. When determining  
19 whether the agreement is in the best interest of the worker, the  
20 industrial appeals judge shall consider the following factors, taken as  
21 a whole, with no individual factor being determinative:

22 (i) The nature and extent of the injuries and disabilities of the  
23 worker;

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

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

28 (iv) The marital or domestic partnership status of the injured  
29 worker.

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

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

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

1 (a) The parties have not entered into the agreement knowingly and  
2 willingly;

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

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

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

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

9 (4) If a worker is represented by an attorney at the time of  
10 signing a claim resolution structured settlement agreement, the parties  
11 shall submit the agreement directly to the board without the conference  
12 described in this section. The requirements of a claim resolution  
13 structured settlement agreement for the purposes of subsection (3) of  
14 this section do not include the determination under subsection (2)(j)  
15 of this section if a worker is represented by an attorney at the time  
16 of signing a claim resolution structured settlement agreement.

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

20 (6) A party may revoke consent to the claim resolution structured  
21 settlement agreement by providing written notice to the other parties  
22 and the board within thirty days after the date the agreement is  
23 approved by the board.

24 (7) To the extent the worker is entitled to any benefits while a  
25 claim resolution structured settlement agreement is being negotiated or  
26 during the revocation period of an agreement, the benefits must be paid  
27 pursuant to the requirements of this title until the agreement becomes  
28 final.

29 (8) A claim resolution structured settlement agreement that meets  
30 the conditions in this section and that has become final and binding as  
31 provided in this section is binding on all parties to the agreement as  
32 to its terms and the injuries and occupational diseases to which the  
33 agreement applies. A claim resolution structured settlement agreement  
34 that has become final and binding is not subject to appeal.

35 (9) All payments made to a worker pursuant to a final claim  
36 resolution structured settlement agreement must be reported to the  
37 department as claims costs pursuant to this title. If a self-insured  
38 employer contracts with a third-party administrator for claim services

1 and the payment of benefits under this title, the third-party  
2 administrator shall also disburse the structured settlement payments  
3 pursuant to the agreement.

4 (10) Claims closed pursuant to a claim resolution structured  
5 settlement agreement can be reopened pursuant to RCW 51.32.160 for  
6 medical treatment only. Further temporary total, temporary partial,  
7 permanent partial, or permanent total benefits are not payable under  
8 the same claim or claims for which a claim resolution structured  
9 settlement agreement has been approved by the board and has become  
10 final.

11 (11) Parties aggrieved by the failure of any other party to comply  
12 with the terms of a claim resolution structured settlement agreement  
13 have one year from the date of failure to comply to petition to the  
14 board. If the board determines that a party has failed to comply with  
15 an agreement, it will order compliance and will impose a penalty  
16 payable to the aggrieved party of up to twenty-five percent of the  
17 monetary amount unpaid at the time the petition for noncompliance was  
18 filed. The board will also decide on any disputes as to attorneys'  
19 fees for services related to claim resolution structured settlement  
20 agreements.

21 (12) Parties and their representatives may not use settlement  
22 offers or the claim resolution structured settlement agreement process  
23 to harass or coerce any party. If the department determines that an  
24 employer has engaged in a pattern of harassment or coercion, the  
25 employer may be subject to penalty or corrective action, and may be  
26 removed from the retrospective rating program or be decertified from  
27 self-insurance under RCW 51.14.030.

28 NEW SECTION. **Sec. 2.** This act may be known and cited as the  
29 workers' recovery act."

30 Renumber the remaining section consecutively and correct any  
31 internal references accordingly.

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1        On page 1, line 1 of the title, after "to" insert "creating the  
2 workers' recovery act by"

3        On page 1, line 3 of the title, after "creating" strike "a new  
4 section" and insert "new sections"

EFFECT:        Removes age threshold for structured settlements.  
Provides that the legislation shall be known and cited as the Workers'  
Recovery Act. Includes a technical amendment that incorporates current  
version of RCW 51.04.063, which was amended in the 2013 gender neutral  
bill.

**--- END ---**