
SENATE BILL 5474

State of Washington

66th Legislature

2019 Regular Session

By Senator Keiser

1 AN ACT Relating to allowing self-insurers to accept certain
2 industrial insurance claims, permitting self-insurers to send
3 duplicates of certain orders made by the department of labor and
4 industries, and establishing a work group to consider whether current
5 penalties on self-insurers are sufficient; amending RCW 51.14.130 and
6 51.52.050; creating a new section; and providing an expiration date.

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

8 **Sec. 1.** RCW 51.14.130 and 1993 c 122 s 3 are each amended to
9 read as follows:

10 (1) For any industrial insurance claim for which the worker may
11 be entitled to benefits other than medical treatment only, when a
12 self-insurer has determined to allow an industrial insurance claim,
13 the self-insurer must issue an order allowing the claim to the
14 injured worker, attending medical provider, and the department within
15 sixty days from the date that the claim is filed. The order of the
16 self-insurer must be issued consistent with rules adopted by the
17 department. An order attempting to segregate conditions in a claim
18 must be approved by the department.

19 (2) The self-insurer (~~shall~~) must request (~~allowance~~)
20 approval of any segregation of conditions in a claim or denial of a
21 claim within sixty days from the date that the claim is filed.

1 (3) If the self-insurer fails to act within sixty days from the
2 date that the claim is filed, the department (~~shall~~) must promptly
3 intervene and adjudicate the claim.

4 (4) The department is authorized to adopt rules as necessary to
5 implement this section, including the:

6 (a) Form of orders allowing industrial insurance claims
7 consistent with the standards followed by the department; and

8 (b) Process for a self-insurer to request and obtain an
9 interlocutory order from the department allowing the self-insurer
10 additional time to investigate the validity of a claim.

11 **Sec. 2.** RCW 51.52.050 and 2011 c 290 s 9 are each amended to
12 read as follows:

13 (1) Whenever the department has made any order, decision, or
14 award, it shall promptly serve the worker, beneficiary, employer, or
15 other person affected thereby, with a copy thereof by mail, or if the
16 worker, beneficiary, employer, or other person affected thereby
17 chooses, the department may send correspondence and other legal
18 notices by secure electronic means except for orders communicating
19 the closure of a claim. In the event the department has made an order
20 communicating the closure of a claim of a self-insured employer, the
21 self-insured employer may serve the department order provided the
22 self-insured employer does so using a secure, verifiable
23 nonelectronic means of delivery and includes the department
24 prescribed notice explaining the contents of the order and any
25 protest or appeal rights. Persons who choose to receive
26 correspondence and other legal notices electronically shall be
27 provided information to assist them in ensuring all electronic
28 documents and communications are received. Correspondence and notices
29 must be addressed to such a person at his or her last known postal or
30 electronic address as shown by the records of the department.
31 Correspondence and notices sent electronically are considered
32 received on the date sent by the department. The copy, in case the
33 same is a final order, decision, or award, shall bear on the same
34 side of the same page on which is found the amount of the award, a
35 statement, set in black faced type of at least ten point body or
36 size, that such final order, decision, or award shall become final
37 within sixty days from the date the order is communicated to the
38 parties unless a written request for reconsideration is filed with
39 the department of labor and industries, Olympia, or an appeal is

1 filed with the board of industrial insurance appeals, Olympia.
2 However, a department order or decision making demand, whether with
3 or without penalty, for repayment of sums paid to a provider of
4 medical, dental, vocational, or other health services rendered to an
5 industrially injured worker, shall state that such order or decision
6 shall become final within twenty days from the date the order or
7 decision is communicated to the parties unless a written request for
8 reconsideration is filed with the department of labor and industries,
9 Olympia, or an appeal is filed with the board of industrial insurance
10 appeals, Olympia.

11 (2) (a) Whenever the department has taken any action or made any
12 decision relating to any phase of the administration of this title
13 the worker, beneficiary, employer, or other person aggrieved thereby
14 may request reconsideration of the department, or may appeal to the
15 board. In an appeal before the board, the appellant shall have the
16 burden of proceeding with the evidence to establish a prima facie
17 case for the relief sought in such appeal.

18 (b) An order by the department awarding benefits shall become
19 effective and benefits due on the date issued. Subject to (b) (i) and
20 (ii) of this subsection, if the department order is appealed the
21 order shall not be stayed pending a final decision on the merits
22 unless ordered by the board. Upon issuance of the order granting the
23 appeal, the board will provide the worker with notice concerning the
24 potential of an overpayment of benefits paid pending the outcome of
25 the appeal and the requirements for interest on unpaid benefits
26 pursuant to RCW 51.52.135. A worker may request that benefits cease
27 pending appeal at any time following the employer's motion for stay
28 or the board's order granting appeal. The request must be submitted
29 in writing to the employer, the board, and the department. Any
30 employer may move for a stay of the order on appeal, in whole or in
31 part. The motion must be filed within fifteen days of the order
32 granting appeal. The board shall conduct an expedited review of the
33 claim file provided by the department as it existed on the date of
34 the department order. The board shall issue a final decision within
35 twenty-five days of the filing of the motion for stay or the order
36 granting appeal, whichever is later. The board's final decision may
37 be appealed to superior court in accordance with RCW 51.52.110. The
38 board shall grant a motion to stay if the moving party demonstrates
39 that it is more likely than not to prevail on the facts as they
40 existed at the time of the order on appeal. The board shall not

1 consider the likelihood of recoupment of benefits as a basis to grant
2 or deny a motion to stay. If a self-insured employer prevails on the
3 merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

4 (i) If upon reconsideration requested by a worker or medical
5 provider, the department has ordered an increase in a permanent
6 partial disability award from the amount reflected in an earlier
7 order, the award reflected in the earlier order shall not be stayed
8 pending a final decision on the merits. However, the increase is
9 stayed without further action by the board pending a final decision
10 on the merits.

11 (ii) If any party appeals an order establishing a worker's wages
12 or the compensation rate at which a worker will be paid temporary or
13 permanent total disability or loss of earning power benefits, the
14 worker shall receive payment pending a final decision on the merits
15 based on the following:

16 (A) When the employer is self-insured, the wage calculation or
17 compensation rate the employer most recently submitted to the
18 department; or

19 (B) When the employer is insured through the state fund, the
20 highest wage amount or compensation rate uncontested by the parties.

21 Payment of benefits or consideration of wages at a rate that is
22 higher than that specified in (b) (ii) (A) or (B) of this subsection is
23 stayed without further action by the board pending a final decision
24 on the merits.

25 (c) In an appeal from an order of the department that alleges
26 willful misrepresentation, the department or self-insured employer
27 shall initially introduce all evidence in its case in chief. Any such
28 person aggrieved by the decision and order of the board may
29 thereafter appeal to the superior court, as prescribed in this
30 chapter.

31 NEW SECTION. **Sec. 3.** (1) The director of labor and industries
32 shall appoint a collaborative work group composed of eight members:

33 (a) Three representing workers of self-insurers;

34 (b) Three representing self-insurers; and

35 (c) Two ex officio members, without a vote, one of whom shall be
36 the representative of the office of the ombuds for workers of
37 industrial insurance self-insured employers and the other the
38 representative of the department of labor and industries.

39 (2) The member representing the department shall be chair.

1 (3) The work group must evaluate:
2 (a) Issues related to whether the current penalties for self-
3 insurers and third-party administrators are sufficient to support:
4 (i) The mandate to provide sure and certain relief for workers
5 injured in their work and their families and dependents; and
6 (ii) The legislature's finding that the workers' compensation
7 system should be designed to focus on achieving the best outcomes for
8 injured workers; and
9 (b) Other issues as the work group deems appropriate.
10 (4) The members shall serve without compensation, but shall be
11 entitled to travel expenses as provided in RCW 43.03.050 and
12 43.03.060.
13 (5) The department shall provide staff support for the work group
14 and pay all expenses of the work group.
15 (6) The work group shall provide a report that includes any
16 findings, recommendations, and draft legislation, to the governor and
17 the appropriate committees of the legislature, by November 1, 2019.
18 (7) This section expires December 31, 2019.

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