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SENATE BILL 6372

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State of Washington

66th Legislature

2020 Regular Session

By Senators King, Braun, and Schoesler

1 AN ACT Relating to structured settlements; and amending RCW  
2 51.04.063.

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

4 **Sec. 1.** RCW 51.04.063 and 2014 c 142 s 2 are each amended to  
5 read as follows:

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

15 (2) (a) As provided in this section, the parties to an allowed  
16 claim may initiate and agree to resolve a claim with a structured  
17 settlement for all benefits other than medical. Parties as defined in  
18 (b) of this subsection may only initiate claim resolution structured  
19 settlements if at least one hundred eighty days have passed since the  
20 claim was received by the department or self-insurer and the order  
21 allowing the claim is final and binding, unless the agreement is to

1 resolve a closed or disputed claim. All requirements of this title  
2 regarding entitlement to and payment of benefits will apply during  
3 this period. All claim resolution structured settlement agreements  
4 must be approved by the board of industrial insurance appeals.

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

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

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

14 (c) The claim resolution structured settlement agreements  
15 (~~shall~~) must:

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

19 (ii) Provide a periodic payment schedule to the worker equal to  
20 at least twenty-five percent but not more than one hundred fifty  
21 percent of the average monthly wage in the state pursuant to RCW  
22 51.08.018, except for the initial payment which may be up to six  
23 times the average monthly wage in the state pursuant to RCW  
24 51.08.018;

25 (iii) Not set aside or reverse an allowance order, unless the  
26 agreement is to resolve a closed or disputed claim;

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

29 (v) Not subject any funds covered under this title to any  
30 responsibility or burden without prior approval from the director or  
31 designee.

32 (d) For state fund claims, the department (~~shall~~) must  
33 negotiate the claim resolution structured settlement agreement with  
34 the worker or their representative and with the employer or employers  
35 and their representative or representatives.

36 (e) For self-insured claims, the self-insured employer (~~shall~~)  
37 must negotiate the agreement with the worker or his or her  
38 representative. Workers of self-insured employers who are  
39 unrepresented may request that the office of the ombuds for self-

1 insured injured workers provide assistance or be present during  
2 negotiations.

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

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

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

25 (i) Before approving the agreement, the industrial appeals judge  
26 (~~shall~~) must ensure the worker has an adequate understanding of the  
27 agreement and its consequences to the worker.

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

35 (i) The nature and extent of the injuries and disabilities of the  
36 worker;

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

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

1 (iv) The marital or domestic partnership status of the injured  
2 worker.

3 (k) Within seven days after the conference, the industrial  
4 appeals judge (~~shall~~) must issue an order allowing or rejecting the  
5 claim resolution structured settlement agreement. There is no appeal  
6 from the industrial appeals judge's decision.

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

10 (3) Upon receiving the agreement, the board (~~shall~~) must  
11 approve it within thirty working days of receipt unless it finds  
12 that:

13 (a) The parties have not entered into the agreement knowingly and  
14 willingly;

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

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

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

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

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

25 (5) If the board approves the agreement, it (~~shall~~) must  
26 provide notice to all parties. The department (~~shall~~) must place  
27 the agreement in the applicable claim file or files.

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

32 (7) To the extent the worker is entitled to any benefits while a  
33 claim resolution structured settlement agreement is being negotiated  
34 or during the revocation period of an agreement, the benefits must be  
35 paid pursuant to the requirements of this title until the agreement  
36 becomes final.

37 (8) A claim resolution structured settlement agreement that meets  
38 the conditions in this section and that has become final and binding  
39 as provided in this section is binding on all parties to the  
40 agreement as to its terms and the injuries and occupational diseases

1 to which the agreement applies. A claim resolution structured  
2 settlement agreement that has become final and binding is not subject  
3 to appeal.

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

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

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

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

35 (13) All information related to individual claims resolution  
36 structured settlement agreements submitted to the board of industrial  
37 insurance appeals, other than final orders from the board of  
38 industrial insurance appeals, is private and exempt from disclosure  
39 under chapter 42.56 RCW.

1           (14) Information gathered during the claims resolution structured  
2 settlement agreement process, including but not limited to forms  
3 filled out by the parties and testimony during a claims resolution  
4 structured settlement conference before the board of industrial  
5 insurance appeals, is a statement made in the course of compromise  
6 negotiations and is inadmissible in any future litigation.

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