
SUBSTITUTE SENATE BILL 5503

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senators Vognild, Newhouse, Sutherland, Moore, Amondson, McAuliffe, Fraser, Pelz, Cantu, Snyder, Deccio and Hochstatter)

Read first time 03/03/93.

1 AN ACT Relating to loss of earning power payments; amending RCW
2 51.32.090; and declaring an emergency.

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

4 **Sec. 1.** RCW 51.32.090 and 1988 c 161 s 4 are each amended to read
5 as follows:

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

9 (2) Any compensation payable under this section for children not in
10 the custody of the injured worker as of the date of injury shall be
11 payable only to such person as actually is providing the support for
12 such child or children pursuant to the order of a court of record
13 providing for support of such child or children.

14 (3) As soon as recovery is so complete that the present earning
15 power of the worker, at any kind of work, is restored to that existing
16 at the time of the occurrence of the injury, the payments shall cease.
17 If and so long as the present earning power is only partially restored,
18 the payments shall continue in the proportion which the new earning
19 power shall bear to the old for injuries occurring before the effective

1 date of this act. For injuries occurring on or after the effective
2 date of this act, the payments shall equal eighty percent of the actual
3 difference between the worker's present wages and earning power at the
4 time of injury, but the total of these payments and the worker's
5 present wages shall not exceed one hundred fifty percent of the average
6 monthly wage in the state as computed by RCW 51.08.018, and in no event
7 may the payments exceed one hundred percent of the entitlement as
8 computed under subsection (1) of this section. No compensation shall
9 be payable unless the loss of earning power shall exceed five percent.

10 (4) Whenever an employer requests that a worker who is entitled to
11 temporary total disability under this chapter be certified by a
12 physician as able to perform available work other than his or her usual
13 work, the employer shall furnish to the physician, with a copy to the
14 worker, a statement describing the available work in terms that will
15 enable the physician to relate the physical activities of the job to
16 the worker's disability. The physician shall then determine whether
17 the worker is physically able to perform the work described. If the
18 worker is released by his or her physician for said work, and the work
19 thereafter comes to an end before the worker's recovery is sufficient
20 in the judgment of his or her physician to permit him or her to return
21 to his or her usual job, or to perform other available work, the
22 worker's temporary total disability payments shall be resumed. Should
23 the available work described, once undertaken by the worker, impede his
24 or her recovery to the extent that in the judgment of his or her
25 physician he or she should not continue to work, the worker's temporary
26 total disability payments shall be resumed when the worker ceases such
27 work.

28 Once the worker returns to work under the terms of this subsection,
29 he or she shall not be assigned by the employer to work other than the
30 available work described without the worker's written consent, or
31 without prior review and approval by the worker's physician.

32 In the event of any dispute as to the worker's ability to perform
33 the available work offered by the employer, the department shall make
34 the final determination.

35 (5) No worker shall receive compensation for or during the day on
36 which injury was received or the three days following the same, unless
37 his or her disability shall continue for a period of fourteen
38 consecutive calendar days from date of injury: PROVIDED, That attempts
39 to return to work in the first fourteen days following the injury shall

1 not serve to break the continuity of the period of disability if the
2 disability continues fourteen days after the injury occurs.

3 (6) Should a worker suffer a temporary total disability and should
4 his or her employer at the time of the injury continue to pay him or
5 her the wages which he or she was earning at the time of such injury,
6 such injured worker shall not receive any payment provided in
7 subsection (1) of this section during the period his or her employer
8 shall so pay such wages.

9 (7) In no event shall the monthly payments provided in this section
10 exceed one hundred percent of the average monthly wage in the state as
11 computed under the provisions of RCW 51.08.018.

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

15 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and shall take
18 effect immediately.

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