
SUBSTITUTE SENATE BILL 5443

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Kohl-Welles and Keiser; by request
of Department of Labor & Industries)

READ FIRST TIME 02/27/07.

1 AN ACT Relating to the suppression of workers' compensation claims;
2 amending RCW 51.28.010, 51.28.025, and 51.28.050; creating a new
3 section; and prescribing penalties.

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

5 **Sec. 1.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
6 as follows:

7 (1) Whenever any accident occurs to any worker it shall be the duty
8 of such worker or someone in his or her behalf to forthwith report such
9 accident to his or her employer, superintendent, or supervisor in
10 charge of the work, and of the employer to at once report such accident
11 and the injury resulting therefrom to the department pursuant to RCW
12 51.28.025 where the worker has received treatment from a physician, has
13 been hospitalized, disabled from work, or has died as the apparent
14 result of such accident and injury.

15 (2) Upon receipt of such notice of accident, the department shall
16 immediately forward to the worker or his or her beneficiaries or
17 dependents notification, in nontechnical language, of their rights
18 under this title. The notice must specify the worker's right to

1 receive health services from a physician of the worker's choice under
2 RCW 51.36.010, including chiropractic services under RCW 51.36.015, and
3 must list the types of providers authorized to provide these services.

4 (3) Employers shall not engage in claim suppression.

5 (4) For the purposes of this section, "claim suppression" means
6 intentionally:

7 (a) Inducing employees to fail to report injuries;

8 (b) Inducing employees to treat injuries in the course of
9 employment as off-the-job injuries; or

10 (c) Acting otherwise to suppress legitimate industrial insurance
11 claims.

12 (5) In determining whether an employer has engaged in claim
13 suppression, the department shall consider the employer's history of
14 compliance with industrial insurance reporting requirements, and
15 whether the employer has discouraged employees from reporting injuries
16 or filing claims. The department has the burden of proving claim
17 suppression by a preponderance of the evidence.

18 (6) Claim suppression does not include bona fide workplace safety
19 and accident prevention programs or an employer's provision at the
20 worksite of first aid as defined by the department. The department
21 shall adopt rules defining bona fide workplace safety and accident
22 prevention programs and defining first aid.

23 **Sec. 2.** RCW 51.28.025 and 1987 c 185 s 32 are each amended to read
24 as follows:

25 (1) Whenever an employer has notice or knowledge of an injury or
26 occupational disease sustained by any worker in his or her employment
27 who has received treatment from a physician, has been hospitalized,
28 disabled from work or has died as the apparent result of such injury or
29 occupational disease, the employer shall immediately report the same to
30 the department on forms prescribed by it. The report shall include:

31 (a) The name, address, and business of the employer;

32 (b) The name, address, and occupation of the worker;

33 (c) The date, time, cause, and nature of the injury or occupational
34 disease;

35 (d) Whether the injury or occupational disease arose in the course
36 of the injured worker's employment;

1 (e) All available information pertaining to the nature of the
2 injury or occupational disease including but not limited to any visible
3 signs, any complaints of the worker, any time lost from work, and the
4 observable effect on the worker's bodily functions, so far as is known;
5 and

6 (f) Such other pertinent information as the department may
7 prescribe by regulation.

8 ~~(2) ((Failure or refusal to file the report required by subsection~~
9 ~~(1) shall subject the offending employer to a penalty determined by the~~
10 ~~director but not to exceed two hundred fifty dollars for each offense,~~
11 ~~to be collected in a civil action in the name of the department and~~
12 ~~paid into the supplemental pension fund.))~~ The employer shall not
13 engage in claim suppression. An employer found to have engaged in
14 claim suppression shall be subject to a penalty of at least two hundred
15 fifty dollars, not to exceed two thousand five hundred dollars, for
16 each offense. The penalty shall be payable to the supplemental pension
17 fund. The department shall adopt rules establishing the amount of
18 penalties, taking into account the size of the employer and whether
19 there are prior findings of claim suppression. When a determination of
20 claim suppression has been made, the employer shall be prohibited from
21 any current or future participation in a retrospective rating program.
22 If self-insured, the director shall withdraw certification as provided
23 in RCW 51.14.080.

24 (3) When a determination of claim suppression is made and the
25 penalty is assessed, the department shall serve the employer and any
26 affected retrospective rating group with a determination as provided in
27 RCW 51.52.050. The determination may be protested to the department or
28 appealed to the board of industrial insurance appeals. Once the order
29 is final, the amount due shall be collected in accordance with the
30 provisions of RCW 51.48.140 and 51.48.150.

31 (4) The director, or the director's designee, shall investigate
32 reports or complaints that an employer has engaged in claim suppression
33 as prohibited in RCW 51.28.010(3). The complaints or allegations must
34 be received in writing, and must include the name or names of the
35 individuals or organizations submitting the complaint. In cases where
36 the department can show probable cause, the director may subpoena
37 records from the employer, medical providers, and any other entity that
38 the director believes may have relevant information. The director's

1 investigative and subpoena authority in this subsection is limited
2 solely to investigations into allegations of claim suppression or where
3 the director has probable cause that claim suppression might have
4 occurred.

5 (5) If the director determines that an employer has engaged in
6 claim suppression and, as a result, the worker has not filed a claim
7 for industrial insurance benefits as prescribed by law, then the
8 director in his or her sole discretion may waive the time limits for
9 filing a claim provided in RCW 51.28.050, if the complaint or
10 allegation of claim suppression is received within two years of the
11 worker's accident or exposure. For the director to exercise this
12 discretion, the claim must be filed with the department within ninety
13 days of the date the determination of claim suppression is issued.

14 (6) For the purposes of this section, "claim suppression" has the
15 same meaning as in RCW 51.28.010(4).

16 **Sec. 3.** RCW 51.28.050 and 1984 c 159 s 1 are each amended to read
17 as follows:

18 No application shall be valid or claim thereunder enforceable
19 unless filed within one year after the day upon which the injury
20 occurred or the rights of dependents or beneficiaries accrued, except
21 as provided in RCW 51.28.055 and 51.28.025(5).

22 NEW SECTION. **Sec. 4.** The department of labor and industries shall
23 adopt rules necessary to implement this act.

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