
SUBSTITUTE SENATE BILL 5676

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Keiser, Kohl-Welles, Murray,
Prentice, Hatfield and Kline)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to temporary total disability; and reenacting and
2 amending RCW 51.32.090.

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

4 **Sec. 1.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
5 c 271 s 1 are each reenacted and amended to read 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)(a) 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:

1 (i) For claims for injuries that occurred before May 7, 1993,
2 continue in the proportion which the new earning power shall bear to
3 the old; or

4 (ii) For claims for injuries occurring on or after May 7, 1993,
5 equal eighty percent of the actual difference between the worker's
6 present wages and earning power at the time of injury, but: (A) The
7 total of these payments and the worker's present wages may not exceed
8 one hundred fifty percent of the average monthly wage in the state as
9 computed under RCW 51.08.018; (B) the payments may not exceed one
10 hundred percent of the entitlement as computed under subsection (1) of
11 this section; and (C) the payments may not be less than the worker
12 would have received if (a)(i) of this subsection had been applicable to
13 the worker's claim.

14 (b) No compensation shall be payable under this subsection (3)
15 unless the loss of earning power shall exceed five percent.

16 (c) The prior closure of the claim or the receipt of permanent
17 partial disability benefits shall not affect the rate at which loss of
18 earning power benefits are calculated upon reopening the claim.

19 (4)(a) Whenever the employer of injury requests that a worker who
20 is entitled to temporary total disability under this chapter be
21 certified by a physician as able to perform available work other than
22 his or her usual work, the employer shall furnish to the physician,
23 with a copy to the worker, a statement describing the work available
24 with the employer of injury in terms that will enable the physician to
25 relate the physical activities of the job to the worker's disability.
26 The physician shall then determine whether the worker is physically
27 able to perform the work described. The worker's temporary total
28 disability payments shall continue until the worker is released by his
29 or her physician for the work, and begins the work with the employer of
30 injury. If the work thereafter comes to an end before the worker's
31 recovery is sufficient in the judgment of his or her physician to
32 permit him or her to return to his or her usual job, or to perform
33 other available work offered by the employer of injury, the worker's
34 temporary total disability payments shall be resumed. Should the
35 available work described, once undertaken by the worker, impede his or
36 her recovery to the extent that in the judgment of his or her physician
37 he or she should not continue to work, the worker's temporary total
38 disability payments shall be resumed when the worker ceases such work.

1 (b) Once the worker returns to work under the terms of this
2 subsection (4), he or she shall not be assigned by the employer to work
3 other than the available work described without the worker's written
4 consent, or without prior review and approval by the worker's
5 physician.

6 (c) If the worker returns to work under this subsection (4), any
7 employee health and welfare benefits that the worker was receiving at
8 the time of injury shall continue or be resumed at the level provided
9 at the time of injury. Such benefits shall not be continued or resumed
10 if to do so is inconsistent with the terms of the benefit program, or
11 with the terms of the collective bargaining agreement currently in
12 force.

13 (d) In the event of any dispute as to the worker's ability to
14 perform the available work offered by the employer, the department
15 shall make the final determination.

16 (5) No worker shall receive compensation for or during the day on
17 which injury was received or the three days following the same, unless
18 his or her disability shall continue for a period of fourteen
19 consecutive calendar days from date of injury: PROVIDED, That attempts
20 to return to work in the first fourteen days following the injury shall
21 not serve to break the continuity of the period of disability if the
22 disability continues fourteen days after the injury occurs.

23 (6) Should a worker suffer a temporary total disability and should
24 his or her employer at the time of the injury continue to pay him or
25 her the wages which he or she was earning at the time of such injury,
26 such injured worker shall not receive any payment provided in
27 subsection (1) of this section during the period his or her employer
28 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
29 sick leave, or other similar benefits shall not be deemed to be
30 payments by the employer for the purposes of this subsection.

31 (7) In no event shall the monthly payments provided in this section
32 exceed the applicable percentage of the average monthly wage in the
33 state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

