

# HOUSE BILL REPORT

## HB 1726

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**As Reported by House Committee On:**  
Labor & Workforce Development

**Title:** An act relating to recommendations of the vocational rehabilitation subcommittee for workers' compensation.

**Brief Description:** Addressing the recommendations of the vocational rehabilitation subcommittee for workers' compensation.

**Sponsors:** Representatives Sells, Roberts, Ormsby, Reykdal, Kenney, Miloscia, Moeller and Upthegrove; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 2/8/11, 2/15/11 [DP].

**Brief Summary of Bill**

- Allows workers suffering the loss of two major limbs or total eyesight to receive vocational services under some circumstances.
- Allows the Department of Labor and Industries to extend the time for a worker to select Option 2 vocational rehabilitation benefits and for a employer to make a valid return-to-work offer.
- Makes other changes in vocational rehabilitation services.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** Do pass. Signed by 13 members: Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Green, Kenney, Miloscia, Moeller, Ormsby, Roberts, Taylor and Warnick.

**Staff:** Joan Elgee (786-7106).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

One of the primary purposes of Washington's Industrial Insurance Act (Act) is to assist injured workers to become employable at gainful employment. The Department of Labor and Industries (Department) pays, or directs self-insurers to pay, the costs of vocational rehabilitation services when these services are necessary and likely to enable the injured worker to become employable at gainful employment. In 2007 the Legislature created a vocational rehabilitation pilot program for plans approved between January 1, 2008, and June 30, 2013.

After an assessment and determination that a worker is eligible for vocational rehabilitation services, a vocational rehabilitation plan is developed. The plan must be completed within 90 days of commencing. A worker has two options:

- Option 1: The worker may participate in the plan.
- Option 2: The worker may decline further vocational services and receive an award equal to six months of time-loss benefits, and the claim is closed. A worker must select Option 2 within 15 days of the Department's approval of the plan for State Fund claims.

When the worker begins development of the plan, the employer has 15 days to make a return-to-work offer. A valid return-to-work offer terminates development of the vocational plan and time-loss benefits.

The 2007 legislation also directed the Department to create a Vocational Rehabilitation Subcommittee (Subcommittee). Among other tasks, the Subcommittee was charged with recommending any additional statutory changes, as well additional changes or incentives for injured workers to return to work with their employer of injury.

A worker who suffers the loss of two major limbs or the loss of total eyesight or paralysis is entitled to what is referred to as a statutory pension. These persons are entitled to a pension without regard to whether they are permanently incapacitated from performing work in any gainful occupation, which is otherwise required to receive a pension.

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**Summary of Bill:**

Vocational services may be provided to a worker who suffered the loss of, or complete use of, two major limbs or total eyesight when, in the Department's discretion, these services will substantially improve either the worker's quality of life or ability to function in an employment setting, regardless of whether these services are necessary or reasonably likely to make the worker employable at any gainful employment. The services must be completed before the worker's entitlement to a pension. These workers are not entitled to Option 2 benefits.

The 15-day period to select Option 2 begins when the Department approves the plan or a determination is made that the plan is valid following a dispute. In addition, the Department may approve the election of Option 2 benefits within 25 days of the approval of the plan or a

determination that the plan is valid if the worker provides a written explanation that the worker was unable to meet the 15-day deadline.

The Department may extend the time an employer has to make a valid return-to-work offer for up to 10 additional days if the employer made an offer within 15 days that met some but not all requirements to be valid. To be valid, the offer must be for bona fide employment with the employer of injury consistent with the worker's documented physical and mental restrictions.

A worker who elects Option 2 is not entitled to further time-loss or pension benefits, except upon a showing of a worsening in condition that makes the closure of the claim inappropriate. In this case, the Option 2 selection is rescinded and the amount paid to the worker is assessed as an overpayment. A closed claim may not be reopened for the sole purpose of allowing the worker to seek vocational assistance.

Clarification is made that the Department makes the determination whether vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment. Erroneous cross-references are deleted.

These provisions expire June 30, 2013.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Vocational Rehabilitation Subcommittee (Subcommittee) was created as part of 2007 legislation to advise the Department and make recommendations for statutory changes. This bill is the Subcommittee's recommendations.

(Opposed) None.

**Persons Testifying:** Vickie Kennedy, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying:** None.