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**SENATE BILL 5510**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Braun, Baumgartner, Rivers, and Angel

AN ACT Relating to simplifying and adding certainty to the calculation of workers' compensation benefits; amending RCW 51.32.050 51.32.060, and 51.32.090; adding a new section to chapter 51.08 RCW; repealing RCW 51.08.178; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  A new section is added to chapter 51.08 RCW to read as follows:

(1) If a worker is injured in an employment that both the worker and the particular employer intend to be permanent and lasting into the foreseeable future, the worker's monthly wage shall be determined by dividing by twelve the total wages earned from the particular employment and any other concurrent employment, including cash bonuses and overtime, in the twelve months immediately preceding the date of injury or manifestation of occupational disease. If the worker has worked less than twelve months for the particular employer in whose employment the worker was injured or manifested the occupational disease, the monthly wage shall be based on the total wages earned by the worker in the employment, divided by the total number of months the worker actually worked in the employment.

(2) If a worker is injured in an employment that either the worker or the particular employer intends to be temporary and not lasting into the foreseeable future, the worker's monthly wage shall be determined by dividing by twelve the total wages earned from all employment, including cash bonuses and overtime, in the twelve months immediately preceding the date of injury or manifestation of occupational disease.

(3) "Wages" means the gross monetary remuneration for services performed with respect to a pay period, paid in cash, by check, by electronic transfer, or by other means directly to the worker or to an account designated by the worker. Wages shall include the actual value of board, housing, and fuel received from the employer as part of the contract for hire. Tips shall be included to the extent that such are reported to the employer for federal income tax purposes. Wages shall not include health and welfare benefits, savings matching programs, or fringe benefits including, but not limited to, retirement and financial benefit plans of whatever nature; life, disability, and wage-replacement insurance of whatever nature; unused accrued leave of whatever nature; memberships of any kind; employee discounts or use or consumption of employer services, material, equipment, and facilities of whatever nature; training and education of whatever nature; and other employee or beneficiary benefit plan for the employee's or beneficiaries' benefit resulting from the employment relationship.

**Sec.**  RCW 51.32.050 and 2010 c 261 s 3 are each amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a)(i) For claims with date of injury or manifestation of occupational disease before July 1, 2015, where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

((~~(i)~~)) (A) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;

((~~(ii)~~)) (B) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;

((~~(iii)~~)) (C) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;

((~~(iv)~~)) (D) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

((~~(v)~~)) (E) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

((~~(vi)~~)) (F) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(ii) For claims with date of injury or manifestation of occupational disease on or after July 1, 2015, where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments of sixty-six and two-thirds percent of the wages of the deceased worker.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section:

(i) Exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | AFTER | PERCENTAGE |  |
|  | June 30, 1993 | 105% |  |
|  | June 30, 1994 | 110% |  |
|  | June 30, 1995 | 115% |  |
|  | June 30, 1996 | 120% |  |

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)(d)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under ((~~RCW 51.08.178~~)) section 1 of this act, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i)(A) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i)(A) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect;

(B) If a surviving spouse is the surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW or the state patrol retirement system under chapter 43.43 RCW, the surviving spouse may receive a lump sum of thirty-six times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i)(A) of this section and RCW 51.32.075(3) or fifty percent of the remaining annuity value of his or her pension provided under this chapter, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the lump sum benefit shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | AFTER | PERCENTAGE |  |
|  | June 30, 1993 | 105% |  |
|  | June 30, 1994 | 110% |  |
|  | June 30, 1995 | 115% |  |
|  | June 30, 1996 | 120% |  |

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | AFTER | PERCENTAGE |  |
|  | June 30, 1993 | 105% |  |
|  | June 30, 1994 | 110% |  |
|  | June 30, 1995 | 115% |  |
|  | June 30, 1996 | 120% |  |

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067.

**Sec.**  RCW 51.32.060 and 2007 c 284 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, when the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

(a) If married at the time of injury, sixty-five percent of his or her wages.

(b) If married with one child at the time of injury, sixty-seven percent of his or her wages.

(c) If married with two children at the time of injury, sixty-nine percent of his or her wages.

(d) If married with three children at the time of injury, seventy-one percent of his or her wages.

(e) If married with four children at the time of injury, seventy-three percent of his or her wages.

(f) If married with five or more children at the time of injury, seventy-five percent of his or her wages.

(g) If unmarried at the time of the injury, sixty percent of his or her wages.

(h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages.

(i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages.

(j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages.

(k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages.

(l) If unmarried with five or more children at the time of injury, seventy percent of his or her wages.

(2) For any claim with date of injury or manifestation of occupational disease on or after July 1, 2015, when the supervisor of industrial insurance determines that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability sixty-six and two-thirds percent of his or her wages as determined under section 1 of this act, but not less than two hundred seventy-six dollars per month.

(3) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes under subsection (1) of this section.

((~~(3)~~)) (4) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

((~~(4)~~)) (5) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

((~~(5)~~)) (6) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | AFTER | PERCENTAGE |  |
|  | June 30, 1993 | 105% |  |
|  | June 30, 1994 | 110% |  |
|  | June 30, 1995 | 115% |  |
|  | June 30, 1996 | 120% |  |

(b) For dates of injury or disease manifestation after July 1, 2008, but before June 30, 2015, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if a worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection ((~~(5)~~)) (6)(b) is greater than one hundred percent of the wages of the worker as determined under ((~~RCW 51.08.178~~)) section 1 of this act, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

The limitations under this subsection shall not apply to the payments provided for in subsection ((~~(3)~~)) (4) of this section.

((~~(6)~~)) (7) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

((~~(7)~~)) (8) The benefits provided by this section are subject to modification under RCW 51.32.067.

**Sec.**  RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each amended to read as follows:

(1) When the total disability is only temporary, for claims with a date of injury or manifestation of occupational disease before June 30, 2015, the schedule of payments contained in RCW 51.32.060 (1) and ((~~(2)~~)) (3) shall apply, so long as the total disability continues. For claims with a date of injury or manifestation of occupational disease on or after July 1, 2015, the schedule of payments contained in RCW 51.32.060(2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children. This subsection does not apply to claims with a date of injury or manifestation of occupational disease on or after July 1, 2015.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored and the worker is working, the payments shall:

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

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

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

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

(d) The injured worker remains eligible for the benefits provided in this subsection only until the injured worker's condition is medically fixed and stable.

(4)(a) The legislature finds that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work following their injury. To encourage employers at the time of injury to provide light duty or transitional work for their workers, wage subsidies and other incentives are made available to employers insured with the department.

(b) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(c) To further encourage employers to maintain the employment of their injured workers, an employer insured with the department and that offers work to a worker pursuant to this subsection (4) shall be eligible for reimbursement of the injured worker's wages for light duty or transitional work equal to fifty percent of the basic, gross wages paid for that work, for a maximum of sixty-six work days within a consecutive twenty-four month period. In no event may the wage subsidies paid to an employer on a claim exceed ten thousand dollars. Wage subsidies shall be calculated using the worker's basic hourly wages or basic salary, and no subsidy shall be paid for any other form of compensation or payment to the worker such as tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments. An employer may not, under any circumstances, receive a wage subsidy for a day in which the worker did not actually perform any work, regardless of whether or not the employer paid the worker wages for that day.

(d) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with training or instruction to be qualified to perform the offered work, the employer shall be eligible for a reimbursement from the department for any tuition, books, fees, and materials required for that training or instruction, up to a maximum of one thousand dollars. Reimbursing an employer for the costs of such training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by RCW 51.32.095 and 51.32.099.

(e) If an employer insured with the department offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer shall be eligible for reimbursement for such clothing from the department, up to a maximum of four hundred dollars. However, an employer shall not receive reimbursement for any clothing it provided to the worker that it normally provides to its workers. The clothing purchased for the worker shall become the worker's property once the work comes to an end.

(f) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with tools or equipment to perform the offered work, the employer shall be eligible for a reimbursement from the department for such tools and equipment and related costs as determined by department rule, up to a maximum of two thousand five hundred dollars. An employer shall not be reimbursed for any tools or equipment purchased prior to offering the work to the worker pursuant to this subsection (4). An employer shall not be reimbursed for any tools or equipment that it normally provides to its workers. The tools and equipment shall be the property of the employer.

(g) An employer may offer work to a worker pursuant to this subsection (4) more than once, but in no event may the employer receive wage subsidies for more than sixty-six days of work in a consecutive twenty-four month period under one claim. An employer may continue to offer work pursuant to this subsection (4) after the worker has performed sixty-six days of work, but the employer shall not be eligible to receive wage subsidies for such work.

(h) An employer shall not receive any wage subsidies or reimbursement of any expenses pursuant to this subsection (4) unless the employer has completed and submitted the reimbursement request on forms developed by the department, along with all related information required by department rules. No wage subsidy or reimbursement shall be paid to an employer who fails to submit a form for such payment within one year of the date the work was performed. In no event shall an employer receive wage subsidy payments or reimbursements of any expenses pursuant to this subsection (4) unless the worker's physician or licensed advanced registered nurse practitioner has restricted him or her from performing his or her usual work and the worker's physician or licensed advanced registered nurse practitioner has released him or her to perform the work offered.

(i) Payments made under (b) through (g) of this subsection are subject to penalties under RCW 51.32.240(5) in cases where the funds were obtained through willful misrepresentation.

(j) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician or licensed advanced registered nurse practitioner. An employer who directs a claimant to perform work other than that approved by the attending physician and without the approval of the worker's physician or licensed advanced registered nurse practitioner shall not receive any wage subsidy or other reimbursements for such work.

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

(l) In the event of any dispute as to the validity of the work offered or as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination pursuant to an order that contains the notice required by RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

(5) An employer's experience rating shall not be affected by the employer's request for or receipt of wage subsidies.

(6) The department shall create a Washington stay-at-work account which shall be funded by assessments of employers insured through the state fund for the costs of the payments authorized by subsection (4) of this section and for the cost of creating a reserve for anticipated liabilities. Employers may collect up to one-half the fund assessment from workers.

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

(8) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) or (2) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(9) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

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| --- | --- | --- | --- |
|  | AFTER | PERCENTAGE |  |
|  | June 30, 1993 | 105% |  |
|  | June 30, 1994 | 110% |  |
|  | June 30, 1995 | 115% |  |
|  | June 30, 1996 | 120% |  |

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (9)(b) is greater than one hundred percent of the wages of the worker as determined under ((~~RCW 51.08.178~~)) section 1 of this act, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(10) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(11) The department shall adopt rules as necessary to implement this section.

NEW SECTION. **Sec.**  RCW 51.08.178 ("Wages"—Monthly wages as basis of compensation—Computation thereof) and 2007 c 297 s 1, 1988 c 161 s 12, & 1980 c 14 s 5 are each repealed.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

**--- END ---**