

# HOUSE BILL REPORT

## HB 2224

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### As Reported By House Committee On:

Commerce & Labor

**Title:** An act relating to return-to-work benefits available prior to a determination of eligibility for vocational rehabilitation services.

**Brief Description:** Making return-to-work benefits available prior to a determination of eligibility for vocational rehabilitation services.

**Sponsors:** Representatives Clements, Conway, Keiser, Stensen and Kenney.

### Brief History:

#### Committee Activity:

Commerce & Labor: 3/1/99 [DPS].

#### Brief Summary of Substitute Bill

- Authorizes payment under the industrial insurance system of early intervention benefits, on request of an employer or prospective employer, to assist in returning injured workers to a modified or new job, with certain conditions and limitations.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk; McIntire and McMorris.

**Staff:** Chris Cordes (786-7103).

### Background:

The Department of Labor and Industries may pay, and may direct self-insured employers to pay, the costs of vocational rehabilitation services for injured workers when these services are necessary and likely to enable the injured worker to become employable at gainful employment. These costs include the cost of books, tuition,

fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses. The costs are limited to \$3,000 in a 52-week period. The department may extend the period of benefits for an additional 52 weeks. Temporary total disability (time-loss) benefits are also paid while the worker is successfully participating in a vocational rehabilitation program.

As part of the vocational rehabilitation program, the department may spend an additional \$5,000 for:

- accommodations for an injured worker when the accommodations are medically necessary for the worker to participate in an approved retraining plan; and
- accommodations that are necessary for the worker to perform the essential functions of an occupation in which the worker is seeking employment, consistent with the retraining plan or the vocational evaluation.

The need for these accommodations must be verified by the worker's attending physician.

The department is also authorized to pay the costs of job modification at an injured worker's previous job or a new job. The statutory purpose of the program is to encourage and assist employers to modify jobs to accommodate retaining or hiring workers with job-related disabilities. The program is intended to be a cooperative effort with the employer, with the department's costs taken from the second injury fund within the accident fund.

The total of the expenditures for an injured worker for accommodations and job modification may not exceed \$5,000.

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### **Summary of Substitute Bill:**

Employers of injured workers may request early intervention benefits to assist the workers to return to work. These benefits may be requested by the employer of injury or a new employer for either a modified job or a new job. The benefits are available to any otherwise eligible worker insured by the state fund who is injured, or who contracts an occupational disease, on or after July 1, 1999, and before July 1, 2002.

Criteria for authorizing early intervention benefits. The Department of Labor and Industries may pay the cost of the benefits if:

- the department has not made a determination with regard to vocational rehabilitation benefits for the injured worker;
- the attending doctor certifies that the worker's disability is likely to last 12 months or more;

- the disability is a substantial impairment that prevents the worker from performing an essential function of the job at injury;
- a job analysis of the proposed job as been completed by a qualified vocational rehabilitation professional and approved by the attending doctor;
- the employer agrees to pay no less than 95 percent of the wages at injury and make the proposed job available to the worker for at least 12 consecutive months; and
- if the benefits are for a new job, it would be an undue hardship to the employer of injury to modify the job at injury.

The benefit package and cost limits. Early intervention benefits may include:

- job modification, including workstation improvements and personal accommodation devices;
- skill enhancement costs limited to tuition, books, and fees; and
- a wage subsidy of up to 30 percent of the injured worker's wages.

For a claim, the combined costs of early intervention benefits and the cost of job modification under current law may not exceed \$5,000. In addition, no more than \$2,500 of the \$5,000 may be spent for consultation services, skill enhancement costs, and the wage subsidy.

An exceptional early intervention benefit is also authorized. The cost of this benefit may not exceed \$10,000, and may be requested if:

- the exceptional benefit will enable the worker to return to work;
- the worker has significant permanent restrictions and marked objective medical findings establishing that it will be an undue hardship for the employer to return the worker to work with the assistance of regular early intervention benefits.

If an authorized wage subsidy payment schedule is not completed before closure of the worker's claim, the wage subsidy may continue to be paid consistent with the schedule.

Employers' cost experience. The costs of job modifications, including workstation improvements and personal accommodation devices, and consultation services will be charged to the employer's medical aid fund cost experience. The cost of skill enhancement benefits and wage subsidies will be charged to the employer's accident fund cost experience.

Requirements for recouping costs. If an employer does not retain the injured worker receiving the early intervention benefits for at least 52 weeks at 95 percent or more of wages at injury, the employer must repay the benefits, unless the failure to retain the worker was for reasons not attributable to the employer.

Notification. The department must notify the employer, the injured worker, and the attending doctor about early intervention benefits within 48 hours of receiving an application for time-loss benefits. After paying 14 days, and before paying 21 days, of time-loss benefits, the department must contact the employer to discuss the use of early intervention benefits to achieve an early return to work.

Reports. Beginning December 1, 2000, the department must report annually to the Workers' Compensation Advisory Committee and the Legislature on a cost-benefit analysis of the utilization of early intervention benefits and the effect on return-to-work outcomes, long-term wage replacement, and employer cost experience.

Miscellaneous. A determination related to granting early intervention benefits may not be used in evidence, obtained in discovery, or otherwise disclosed in a civil or administrative proceeding, other than a proceeding related to industrial insurance.

The department must enter into an interagency agreement with the Employment Security Department regarding access to employer wage information for verification purposes.

**Substitute Bill Compared to Original Bill:** The substitute bill limits the scope of the early intervention benefit program to workers insured under the state fund, and removes references to self-insured employers.

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**Appropriation:** None.

**Fiscal Note:** Requested February 23, 1999.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect July 1, 1999.

**Testimony For:** (Original bill) Over the last six months, business and labor have worked out an agreement on the first step of a larger package to improve vocational services for injured workers. This bill represents the concept contained in that first step. While the details still need work, the bill should move forward. The purpose of the bill is to get resources to employers before the formal vocational rehabilitation program begins, so that employers can keep their workers on the job. These ideas are closely related to the concepts tested in the long-term disability pilots. The bill should be amended to focus on the state fund and remove the self-insurers who, unlike the state fund, are not subject to monetary limits on vocational services and, therefore, spend more on these services.

**Testimony Against:** None.

**Testified:** (In favor) Tom Bristow, National Association of Rehabilitation Professionals in the Private Sector; Clif Finch, Association of Washington Business; and Robby Stern, Washington State Labor Council.

(In favor with concerns) Margie Wineberg, Washington Self-Insurers Association; and Michael Temple, Washington State Trial Lawyers Association.