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HOUSE BILL 1455

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Conway, Campbell, Wood, Barlean, Kenney, Hunt, Keiser, Hurst and Santos

Read first time 01/26/2001. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the definition of gainful employment for  
2 purposes of vocational rehabilitation under industrial insurance; and  
3 amending RCW 51.32.095.

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

5 **Sec. 1.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
6 as follows:

7 (1) One of the primary purposes of this title is to enable the  
8 injured worker to become employable at gainful employment. To this  
9 end, the department or self-insurers shall utilize the services of  
10 individuals and organizations, public or private, whose experience,  
11 training, and interests in vocational rehabilitation and retraining  
12 qualify them to lend expert assistance to the supervisor of industrial  
13 insurance in such programs of vocational rehabilitation as may be  
14 reasonable to make the worker employable consistent with his or her  
15 physical and mental status. Where, after evaluation and recommendation  
16 by such individuals or organizations and prior to final evaluation of  
17 the worker's permanent disability and in the sole opinion of the  
18 supervisor or supervisor's designee, whether or not medical treatment  
19 has been concluded, vocational rehabilitation is both necessary and

1 likely to enable the injured worker to become employable at gainful  
2 employment, the supervisor or supervisor's designee may, in his or her  
3 sole discretion, pay or, if the employer is a self-insurer, direct the  
4 self-insurer to pay the cost as provided in subsection (3) of this  
5 section.

6 (2) When in the sole discretion of the supervisor or the  
7 supervisor's designee vocational rehabilitation is both necessary and  
8 likely to make the worker employable at gainful employment, then the  
9 following order of priorities shall be used:

10 (a) Return to the previous job with the same employer;

11 (b) Modification of the previous job with the same employer  
12 including transitional return to work;

13 (c) A new job with the same employer in keeping with any  
14 limitations or restrictions;

15 (d) Modification of a new job with the same employer including  
16 transitional return to work;

17 (e) Modification of the previous job with a new employer;

18 (f) A new job with a new employer or self-employment based upon  
19 transferable skills;

20 (g) Modification of a new job with a new employer;

21 (h) A new job with a new employer or self-employment involving on-  
22 the-job training;

23 (i) Short-term retraining and job placement.

24 (3)(a) Except as provided in (b) of this subsection, costs for  
25 vocational rehabilitation benefits allowed by the supervisor or  
26 supervisor's designee under subsection (1) of this section may include  
27 the cost of books, tuition, fees, supplies, equipment, transportation,  
28 child or dependent care, and other necessary expenses for any such  
29 worker in an amount not to exceed three thousand dollars in any fifty-  
30 two week period (~~except as authorized by RCW 51.60.060,~~) and the cost  
31 of continuing the temporary total disability compensation under RCW  
32 51.32.090 while the worker is actively and successfully undergoing a  
33 formal program of vocational rehabilitation.

34 (b) Beginning with vocational rehabilitation plans approved on or  
35 after July 1, 1999, costs for vocational rehabilitation benefits  
36 allowed by the supervisor or supervisor's designee under subsection (1)  
37 of this section may include the cost of books, tuition, fees, supplies,  
38 equipment, child or dependent care, and other necessary expenses for  
39 any such worker in an amount not to exceed four thousand dollars in any

1 fifty-two week period (~~except as authorized by RCW 51.60.060,~~) and  
2 the cost of transportation and continuing the temporary total  
3 disability compensation under RCW 51.32.090 while the worker is  
4 actively and successfully undergoing a formal program of vocational  
5 rehabilitation.

6 (c) The expenses allowed under (a) or (b) of this subsection may  
7 include training fees for on-the-job training and the cost of  
8 furnishing tools and other equipment necessary for self-employment or  
9 reemployment. However, compensation or payment of retraining with job  
10 placement expenses under (a) or (b) of this subsection may not be  
11 authorized for a period of more than fifty-two weeks, except that such  
12 period may, in the sole discretion of the supervisor after his or her  
13 review, be extended for an additional fifty-two weeks or portion  
14 thereof by written order of the supervisor.

15 (d) In cases where the worker is required to reside away from his  
16 or her customary residence, the reasonable cost of board and lodging  
17 shall also be paid.

18 (e) Costs paid under this subsection shall be chargeable to the  
19 employer's cost experience or shall be paid by the self-insurer as the  
20 case may be.

21 (4) In addition to the vocational rehabilitation expenditures  
22 provided for under subsection (3) of this section, an additional five  
23 thousand dollars may, upon authorization of the supervisor or the  
24 supervisor's designee, be expended for: (a) Accommodations for an  
25 injured worker that are medically necessary for the worker to  
26 participate in an approved retraining plan; and (b) accommodations  
27 necessary to perform the essential functions of an occupation in which  
28 an injured worker is seeking employment, consistent with the retraining  
29 plan or the recommendations of a vocational evaluation. The injured  
30 worker's attending physician must verify the necessity of the  
31 modifications or accommodations. The total expenditures authorized in  
32 this subsection and the expenditures authorized under RCW 51.32.250  
33 shall not exceed five thousand dollars.

34 (5) The department shall establish criteria to monitor the quality  
35 and effectiveness of rehabilitation services provided by the  
36 individuals and organizations used under subsection (1) of this  
37 section. The state fund shall make referrals for vocational  
38 rehabilitation services based on these performance criteria.

1 (6) The department shall engage in, where feasible and cost-  
2 effective, a cooperative program with the state employment security  
3 department to provide job placement services under this section.

4 (7) The benefits in this section shall be provided for the injured  
5 workers of self-insured employers. Self-insurers shall report both  
6 benefits provided and benefits denied under this section in the manner  
7 prescribed by the department by rule adopted under chapter 34.05 RCW.  
8 The director may, in his or her sole discretion and upon his or her own  
9 initiative or at any time that a dispute arises under this section,  
10 promptly make such inquiries as circumstances require and take such  
11 other action as he or she considers will properly determine the matter  
12 and protect the rights of the parties.

13 (8) Except as otherwise provided in this section, the benefits  
14 provided for in this section are available to any otherwise eligible  
15 worker regardless of the date of industrial injury. However, claims  
16 shall not be reopened solely for vocational rehabilitation purposes.

17 (9) For the purposes of this section, "gainful employment" means  
18 employment or self-employment in which the monthly wages, including  
19 benefits provided by the employer, are equal to or greater than eighty  
20 percent of the monthly wages earned by the worker at the time of injury  
21 or the legal minimum wage, whichever is greater.

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