
SENATE BILL 6415

State of Washington

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By Senators Conway, Kohl-Welles, Keiser, and Kline

Read first time 01/23/12. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to the development of an informational document for
2 use during negotiations for self-insured claims; and amending RCW
3 51.14.340 and 51.04.063.

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

5 **Sec. 1.** RCW 51.14.340 and 2007 c 281 s 5 are each amended to read
6 as follows:

7 The office of the ombudsman shall have the following powers and
8 duties:

9 (1) To act as an advocate for injured workers of self-insured
10 employers;

11 (2) To offer and provide information on industrial insurance as
12 appropriate to workers of self-insured employers;

13 (3) To identify, investigate, and facilitate resolution of
14 industrial insurance complaints from workers of self-insured employers;

15 (4) To maintain a statewide toll-free telephone number for the
16 receipt of complaints and inquiries; (~~and~~)

17 (5) To refer complaints to the department when appropriate; and

18 (6) To develop a standardized informational document to be given to
19 injured workers pursuant to RCW 51.04.063.

1 **Sec. 2.** RCW 51.04.063 and 2011 1st sp.s. c 37 s 302 are each
2 amended to read as follows:

3 (1) Notwithstanding RCW 51.04.060 or any other provision of this
4 title, beginning on January 1, 2012, an injured worker who is at least
5 fifty-five years of age on or after January 1, 2012, fifty-three years
6 of age on or after January 1, 2015, or fifty years of age on or after
7 January 1, 2016, may choose from the following: (a) To continue to
8 receive all benefits for which they are eligible under this title, (b)
9 to participate in vocational training if eligible, or (c) to initiate
10 and agree to a resolution of their claim with a structured settlement.

11 (2)(a) As provided in this section, the parties to an allowed claim
12 may initiate and agree to resolve a claim with a structured settlement
13 for all benefits other than medical. Parties as defined in (b) of this
14 subsection may only initiate claim resolution structured settlements if
15 at least one hundred eighty days have passed since the claim was
16 received by the department or self-insurer and the order allowing the
17 claim is final and binding. All requirements of this title regarding
18 entitlement to and payment of benefits will apply during this period.
19 All claim resolution structured settlement agreements must be approved
20 by the board of industrial insurance appeals.

21 (b) For purposes of this section, "parties" means:

22 (i) For a state fund claim, the worker, the employer, and the
23 department. The employer will not be a party if the costs of the claim
24 or claims are no longer included in the calculation of the employer's
25 experience factor used to determine premiums, if they cannot be
26 located, are no longer in business, or they fail to respond or decline
27 to participate after timely notice of the claim resolution settlement
28 process provided by the board and the department.

29 (ii) For a self-insured claim, the worker and the employer.

30 (c) The claim resolution structured settlement agreements shall:

31 (i) Bind the parties with regard to all aspects of a claim except
32 medical benefits unless revoked by one of the parties as provided in
33 subsection (6) of this section;

34 (ii) Provide a periodic payment schedule to the worker equal to at
35 least twenty-five percent but not more than one hundred fifty percent
36 of the average monthly wage in the state pursuant to RCW 51.08.018,
37 except for the initial payment which may be up to six times the average
38 monthly wage in the state pursuant to RCW 51.08.018;

1 (iii) Not set aside or reverse an allowance order;

2 (iv) Not subject any employer who is not a signatory to the
3 agreement to any responsibility or burden under any claim; and

4 (v) Not subject any funds covered under this title to any
5 responsibility or burden without prior approval from the director or
6 designee.

7 (d) For state fund claims, the department shall negotiate the claim
8 resolution structured settlement agreement with the worker or their
9 representative and with the employer or employers and their
10 representative or representatives.

11 (e) For self-insured claims, the self-insured employer shall
12 negotiate the agreement with the worker or their representative.
13 Before entering into negotiations with the worker, the employer or
14 their representative must provide the worker with an informational
15 document created by the self-insured ombudsman pursuant to RCW
16 51.14.340. Workers of self-insured employers who are unrepresented may
17 request that the office of the ombudsman for self-insured injured
18 workers provide assistance or be present during negotiations.

19 (f) Terms of the agreement may include the parties' agreement that
20 the claim shall remain open for future necessary medical or surgical
21 treatment related to the injury where there is a reasonable expectation
22 such treatment is necessary. The parties may also agree that specific
23 future treatment shall be provided without the application required in
24 RCW 51.32.160.

25 (g) Any claim resolution structured settlement agreement entered
26 into under this section must be in writing and signed by the parties or
27 their representatives and must clearly state that the parties
28 understand and agree to the terms of the agreement.

29 (h) If a worker is not represented by an attorney at the time of
30 signing a claim resolution structured settlement agreement, the parties
31 must forward a copy of the signed agreement to the board with a request
32 for a conference with an industrial appeals judge. The industrial
33 appeals judge must schedule a conference with all parties within
34 fourteen days for the purpose of (i) reviewing the terms of the
35 proposed settlement agreement by the parties; and (ii) ensuring the
36 worker has an understanding of the benefits generally available under
37 this title and that a claim resolution structured settlement agreement

1 may alter the benefits payable on the claim or claims. The judge may
2 schedule the initial conference for a later date with the consent of
3 the parties.

4 (i) Before approving the agreement, the industrial appeals judge
5 shall ensure the worker has an adequate understanding of the agreement
6 and its consequences to the worker.

7 (j) The industrial appeals judge may approve a claim resolution
8 structured settlement agreement only if the judge finds that the
9 agreement is in the best interest of the worker. When determining
10 whether the agreement is in the best interest of the worker, the
11 industrial appeals judge shall consider the following factors, taken as
12 a whole, with no individual factor being determinative:

13 (i) The nature and extent of the injuries and disabilities of the
14 worker;

15 (ii) The age and life expectancy of the injured worker;

16 (iii) Other benefits the injured worker is receiving or is entitled
17 to receive and the effect a claim resolution structured settlement
18 agreement might have on those benefits; and

19 (iv) The marital or domestic partnership status of the injured
20 worker.

21 (k) Within seven days after the conference, the industrial appeals
22 judge shall issue an order allowing or rejecting the claim resolution
23 structured settlement agreement. There is no appeal from the
24 industrial appeals judge's decision.

25 (l) If the industrial appeals judge issues an order allowing the
26 claim resolution structured settlement agreement, the order must be
27 submitted to the board.

28 (3) Upon receiving the agreement, the board shall approve it within
29 thirty working days of receipt unless it finds that:

30 (a) The parties have not entered into the agreement knowingly and
31 willingly;

32 (b) The agreement does not meet the requirements of a claim
33 resolution structured settlement agreement;

34 (c) The agreement is the result of a material misrepresentation of
35 law or fact;

36 (d) The agreement is the result of harassment or coercion; or

37 (e) The agreement is unreasonable as a matter of law.

1 (4) If a worker is represented by an attorney at the time of
2 signing a claim resolution structured settlement agreement, the parties
3 shall submit the agreement directly to the board without the conference
4 described in this section.

5 (5) If the board approves the agreement, it shall provide notice to
6 all parties. The department shall place the agreement in the
7 applicable claim file or files.

8 (6) A party may revoke consent to the claim resolution structured
9 settlement agreement by providing written notice to the other parties
10 and the board within thirty days after the date the agreement is
11 approved by the board.

12 (7) To the extent the worker is entitled to any benefits while a
13 claim resolution structured settlement agreement is being negotiated or
14 during the revocation period of an agreement, the benefits must be paid
15 pursuant to the requirements of this title until the agreement becomes
16 final.

17 (8) A claim resolution structured settlement agreement that meets
18 the conditions in this section and that has become final and binding as
19 provided in this section is binding on all parties to the agreement as
20 to its terms and the injuries and occupational diseases to which the
21 agreement applies. A claim resolution structured settlement agreement
22 that has become final and binding is not subject to appeal.

23 (9) All payments made to a worker pursuant to a final claim
24 resolution structured settlement agreement must be reported to the
25 department as claims costs pursuant to this title. If a self-insured
26 employer contracts with a third-party administrator for claim services
27 and the payment of benefits under this title, the third-party
28 administrator shall also disburse the structured settlement payments
29 pursuant to the agreement.

30 (10) Claims closed pursuant to a claim resolution structured
31 settlement agreement can be reopened pursuant to RCW 51.32.160 for
32 medical treatment only. Further temporary total, temporary partial,
33 permanent partial, or permanent total benefits are not payable under
34 the same claim or claims for which a claim resolution structured
35 settlement agreement has been approved by the board and has become
36 final.

37 (11) Parties aggrieved by the failure of any other party to comply
38 with the terms of a claim resolution structured settlement agreement

1 have one year from the date of failure to comply to petition to the
2 board. If the board determines that a party has failed to comply with
3 an agreement, they will order compliance and will impose a penalty
4 payable to the aggrieved party of up to twenty-five percent of the
5 monetary amount unpaid at the time the petition for noncompliance was
6 filed. The board will also decide on any disputes as to attorneys'
7 fees for services related to claim resolution structured settlement
8 agreements.

9 (12) Parties and their representatives may not use settlement
10 offers or the claim resolution structured settlement agreement process
11 to harass or coerce any party. If the department determines that an
12 employer has engaged in a pattern of harassment or coercion, the
13 employer may be subject to penalty or corrective action, and may be
14 removed from the retrospective rating program or be decertified from
15 self-insurance under RCW 51.14.030.

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