
SENATE BILL 5451

State of Washington

64th Legislature

2015 Regular Session

By Senators Braun, Keiser, Conway, Kohl-Welles, and McAuliffe; by request of Department of Labor & Industries

Read first time 01/22/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to addressing vocational rehabilitation by making
2 certain recommendations from the vocational rehabilitation
3 subcommittee permanent and creating certain incentives for employers
4 to employ injured workers with permanent disabilities; amending RCW
5 51.16.120, 51.32.095, and 51.44.040; reenacting and amending RCW
6 51.32.099; adding a new section to chapter 51.32 RCW; creating new
7 sections; and repealing 2013 c 331 s 3, 2011 c 291 s 3, and 2013 c
8 331 s 6 (uncodified).

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

10 **Sec. 1.** RCW 51.16.120 and 2010 c 213 s 1 are each amended to
11 read as follows:

12 (1) Whenever a worker has a previous bodily disability from any
13 previous injury or disease, whether known or unknown to the employer,
14 and (~~shall~~) suffers a further disability from injury or
15 occupational disease in employment covered by this title and becomes
16 totally and permanently disabled from the combined effects thereof or
17 dies when death was substantially accelerated by the combined effects
18 thereof, then the experience record of an employer insured with the
19 state fund at the time of the further injury or disease (~~shall~~)
20 must be charged and a self-insured employer (~~shall~~) must pay
21 directly into the reserve fund only the accident cost which would

1 have resulted solely from the further injury or disease, had there
2 been no preexisting disability, and which accident cost (~~shall~~)
3 must be based upon an evaluation of the disability by medical
4 experts. The difference between the charge thus assessed to such
5 employer at the time of the further injury or disease and the total
6 cost of the pension reserve (~~shall~~) must be assessed against the
7 second injury fund. Except as provided in subsection (2) of this
8 section, the department (~~shall~~) must pass upon the application of
9 this section in all cases where benefits are paid for total permanent
10 disability or death and issue an order thereon appealable by the
11 employer. Pending outcome of such appeal the transfer or payment
12 (~~shall~~) must be made as required by such order.

13 (2) If a self-insured employer is in default or the director has
14 withdrawn the certification of a self-insured employer, the
15 department (~~shall~~) may not pass on the application of this section.
16 In such cases, the total cost of the pension reserve (~~shall~~) must
17 first be assessed against the defaulting self-insured employer's
18 deposit required by RCW 51.14.020 and in cases where the surety funds
19 are insufficient the remaining cost of the pension reserve (~~shall~~)
20 must be assessed against the insolvency trust fund.

21 (3) The department (~~shall~~) must, in cases of claims of workers
22 sustaining injuries or occupational diseases in the employ of state
23 fund employers, recompute the experience record of such employers
24 when the claims of workers injured in their employ have been found to
25 qualify for payments from the second injury fund after the regular
26 time for computation of such experience records and the department
27 may make appropriate adjustments in such cases including cash refunds
28 or credits to such employers.

29 (~~(4) ((To encourage employment of injured workers who are not
30 reemployed by the employer at the time of injury, the department may
31 adopt rules providing for the reduction or elimination of premiums or
32 assessments from subsequent employers of such workers and may also
33 adopt rules for the reduction or elimination of charges against such
34 employers in the event of further injury to such workers in their
35 employ.~~

36 (+5)) To encourage employment of injured workers who have a
37 developmental disability as defined in RCW 71A.10.020, the department
38 may adopt rules providing for the reduction or elimination of
39 premiums or assessments from employers of such workers and may also
40 adopt rules for the reduction or elimination of charges against their

1 employers in the event of further injury to such workers in their
2 employ.

3 **Sec. 2.** RCW 51.32.095 and 2013 c 331 s 1 are each amended to
4 read as follows:

5 (1) One of the primary purposes of this title is to enable the
6 injured worker to become employable at gainful employment. To this
7 end, the department or self-insurers (~~shall~~) must utilize the
8 services of individuals and organizations, public or private, whose
9 experience, training, and interests in vocational rehabilitation and
10 retraining qualify them to lend expert assistance to the supervisor
11 of industrial insurance in such programs of vocational rehabilitation
12 as may be reasonable to make the worker employable consistent with
13 his or her physical and mental status. Where, after evaluation and
14 recommendation by such individuals or organizations and prior to
15 final evaluation of the worker's permanent disability and in the sole
16 opinion of the supervisor or supervisor's designee, whether or not
17 medical treatment has been concluded, vocational rehabilitation is
18 both necessary and likely to enable the injured worker to become
19 employable at gainful employment, the supervisor or supervisor's
20 designee may, in his or her sole discretion, pay or, if the employer
21 is a self-insurer, direct the self-insurer to pay the cost as
22 provided in subsection (~~(4)~~) (5) of this section or RCW 51.32.099,
23 as appropriate. An injured worker may not participate in vocational
24 rehabilitation under this section or RCW 51.32.099 if such
25 participation would result in a payment of benefits as described in
26 RCW 51.32.240(5), and any benefits so paid (~~shall~~) must be
27 recovered according to the terms of that section.

28 (~~When in the sole discretion of the supervisor or the~~
29 ~~supervisor's designee vocational rehabilitation is both necessary and~~
30 ~~likely to make the worker employable at gainful employment, then the~~
31 ~~following order of priorities shall be used~~) Vocational
32 rehabilitation services may be provided to an injured worker when in
33 the sole discretion of the supervisor or the supervisor's designee
34 vocational rehabilitation is both necessary and likely to make the
35 worker employable at gainful employment. In determining whether to
36 provide vocational services and at what level, the following list
37 must be used, in order of priority with the highest priority given to
38 returning a worker to employment:

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

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

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

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

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

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

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

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

13 (i) Short-term retraining (~~and job placement~~).

14 (3) Notwithstanding subsection (2) of this section, vocational
15 services may be provided to an injured worker who has suffered the
16 loss or complete use of both legs, or arms, or one leg and one arm,
17 or total eyesight when, in the sole discretion of the supervisor or
18 the supervisor's designee, these services will either substantially
19 improve the worker's quality of life or substantially improve the
20 worker's ability to function in an employment setting, regardless of
21 whether or not these services are either necessary or reasonably
22 likely to make the worker employable at any gainful employment.
23 Vocational services must be completed prior to the commencement of
24 the worker's entitlement to benefits under RCW 51.32.060. However,
25 workers who are eligible for vocational services under this
26 subsection are not eligible for option 2 benefits, as provided in RCW
27 51.32.099(4) and section 5 of this act.

28 (4) To encourage the employment of individuals who have suffered
29 an injury or occupational disease resulting in permanent disability
30 which may be a substantial obstacle to employment, the supervisor or
31 supervisor's designee, in his or her sole discretion, may provide
32 assistance including job placement services for eligible injured
33 workers who are receiving vocational services under the return-to-
34 work priorities listed in subsection (2)(b) through (i) of this
35 section, except for self-employment, and to employers that employ
36 them. The assistance listed in (a) through (f) of this subsection is
37 only available in cases where the worker is employed:

38 (a) Reduction or elimination of premiums or assessments owed by
39 employers for such workers;

1 (b) Reduction or elimination of charges against the employers in
2 the event of further injury to such workers in their employ;

3 (c) Reimbursement of the injured worker's wages for light duty or
4 transitional work consistent with the limitations in RCW
5 51.32.090(4)(c);

6 (d) Reimbursement for the costs of clothing that is necessary to
7 allow the worker to perform the offered work consistent with the
8 limitations in RCW 51.32.090(4)(e);

9 (e) Reimbursement for the costs of tools or equipment to allow
10 the worker to perform the work consistent with the limitations in RCW
11 51.32.090(4)(f);

12 (f) A one-time payment equal to the lesser of ten percent of the
13 worker's wages including commissions and bonuses paid or ten thousand
14 dollars for continuous employment without reduction in base wages for
15 at least twelve months. The twelve months begin the first date of
16 employment and the one-time payment is available at the sole
17 discretion of the supervisor of industrial insurance;

18 (g) The benefits described in this section are available to a
19 state fund employer without regard to whether the worker was employed
20 by the state fund employer at the time of injury. The benefits are
21 available to a self-insured employer only in cases where the worker
22 was employed by a state fund employer at the time of injury or
23 occupational disease manifestation;

24 (h) The benefits described in (a) through (f) of this subsection
25 (4) are only available in instances where a vocational rehabilitation
26 professional and the injured worker's health care provider have
27 confirmed that the worker has returned to work that is consistent
28 with the worker's limitations and physical restrictions.

29 (5)(a) For vocational plans approved prior to July 1, 1999, costs
30 for vocational rehabilitation benefits allowed by the supervisor or
31 supervisor's designee under subsection (1) of this section may
32 include the cost of books, tuition, fees, supplies, equipment,
33 transportation, child or dependent care, and other necessary expenses
34 for any such worker in an amount not to exceed three thousand dollars
35 in any fifty-two week period, and the cost of continuing the
36 temporary total disability compensation under RCW 51.32.090 while the
37 worker is actively and successfully undergoing a formal program of
38 vocational rehabilitation.

39 (b) When the department has approved a vocational plan for a
40 worker between July 1, 1999, through December 31, 2007, costs for

1 vocational rehabilitation benefits allowed by the supervisor or
2 supervisor's designee under subsection (1) of this section may
3 include the cost of books, tuition, fees, supplies, equipment, child
4 or dependent care, and other necessary expenses for any such worker
5 in an amount not to exceed four thousand dollars in any fifty-two
6 week period, and the cost of transportation and continuing the
7 temporary total disability compensation under RCW 51.32.090 while the
8 worker is actively and successfully undergoing a formal program of
9 vocational rehabilitation.

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

19 (d) In cases where the worker is required to reside away from his
20 or her customary residence, the reasonable cost of board and lodging
21 (~~shall~~) must also be paid.

22 (e) Costs paid under this subsection (~~shall~~) must be chargeable
23 to the employer's cost experience or (~~shall~~) must be paid by the
24 self-insurer as the case may be.

25 (~~(+5)~~) (6) In addition to the vocational rehabilitation
26 expenditures provided for under subsection (~~(+4)~~) (5) of this
27 section and RCW 51.32.099, an additional five thousand dollars may,
28 upon authorization of the supervisor or the supervisor's designee, be
29 expended for: (a) Accommodations for an injured worker that are
30 medically necessary for the worker to participate in an approved
31 retraining plan; and (b) accommodations necessary to perform the
32 essential functions of an occupation in which an injured worker is
33 seeking employment, consistent with the retraining plan or the
34 recommendations of a vocational evaluation. The injured worker's
35 attending physician or licensed advanced registered nurse
36 practitioner must verify the necessity of the modifications or
37 accommodations. The total expenditures authorized in this subsection
38 and the expenditures authorized under RCW 51.32.250 (~~shall~~) may not
39 exceed five thousand dollars.

1 ~~((+6))~~ (7)(a) When the department has approved a vocational plan
2 for a worker prior to January 1, 2008, regardless of whether the
3 worker has begun participating in the approved plan, costs for
4 vocational rehabilitation benefits allowed by the supervisor or
5 supervisor's designee under subsection (1) of this section are
6 limited to those provided under subsections ~~((+4) and)~~ (5) and (6)
7 of this section.

8 (b) For vocational plans approved for a worker between January 1,
9 2008, through ~~((June 30, 2016))~~ July 31, 2015, total vocational costs
10 allowed by the supervisor or supervisor's designee under subsection
11 (1) of this section ~~((shall be))~~ is limited to those provided under
12 the pilot program established in RCW 51.32.099, and vocational
13 rehabilitation services ~~((shall))~~ must conform to the requirements in
14 RCW 51.32.099.

15 ~~((+7))~~ (8) The department ~~((shall))~~ must establish criteria to
16 monitor the quality and effectiveness of rehabilitation services
17 provided by the individuals and organizations ~~((used under subsection~~
18 ~~(1) of this section and under RCW 51.32.099))~~. The state fund
19 ~~((shall))~~ must make referrals for vocational rehabilitation services
20 based on these performance criteria.

21 ~~((+8))~~ (9) The department ~~((shall))~~ must engage in, where
22 feasible and cost-effective, a cooperative program with the state
23 employment security department to provide job placement services
24 under this section ~~((and RCW 51.32.099))~~ including participation by
25 the department as a partner with WorkSource and with the private
26 vocational rehabilitation community to refer workers to these
27 vocational professionals for job search and job placement assistance.
28 As a partner, the department must place vocational professional full-
29 time employees at selected WorkSource locations who will work with
30 employers to market the benefits of on-the-job training programs and
31 preferred worker financial incentives as described in RCW
32 51.32.095(3). For the purposes of this subsection, "WorkSource" means
33 the established state system that administers the federal workforce
34 investment act of 1998.

35 ~~((+9))~~ (10) The benefits in this section ~~((and))~~, RCW 51.32.099
36 ~~((shall))~~, and section 5 of this act must be provided for the injured
37 workers of self-insured employers. Self-insurers ~~((shall))~~ must
38 report both benefits provided and benefits denied ~~((under this~~
39 ~~section and RCW 51.32.099))~~ in the manner prescribed by the
40 department by rule adopted under chapter 34.05 RCW. The director may,

1 in his or her sole discretion and upon his or her own initiative or
2 at any time that a dispute arises under this section (~~(e)~~), RCW
3 51.32.099, or section 5 of this act, promptly make such inquiries as
4 circumstances require and take such other action as he or she
5 considers will properly determine the matter and protect the rights
6 of the parties.

7 (~~(10)~~) (11) Except as otherwise provided (~~in this section or~~
8 ~~RCW 51.32.099~~), the benefits provided for in this section (~~and~~),
9 RCW 51.32.099, and section 5 of this act are available to any
10 otherwise eligible worker regardless of the date of industrial
11 injury. However, claims (~~shall~~) may not be reopened solely for
12 vocational rehabilitation purposes.

13 NEW SECTION. **Sec. 3.** The following acts or parts of acts are
14 each repealed:

- 15 (1) 2013 c 331 s 3 and 2011 c 291 s 3 (uncodified); and
16 (2) 2013 c 331 s 6 (uncodified).

17 **Sec. 4.** RCW 51.32.099 and 2013 c 331 s 2 and 2013 c 326 s 1 are
18 each reenacted and amended to read as follows:

19 (1)(a) The legislature intends to create improved vocational
20 outcomes for Washington state injured workers and employers through
21 legislative and regulatory change under a pilot program for the
22 period of January 1, 2008, through (~~June 30, 2016~~) July 31, 2015.
23 This pilot vocational system is intended to allow opportunities for
24 eligible workers to participate in meaningful retraining in high-
25 demand occupations, improve successful return to work and achieve
26 positive outcomes for workers, reduce the incidence of repeat
27 vocational services, increase accountability and responsibility, and
28 improve cost predictability. To facilitate the study and evaluation
29 of the results of the proposed changes, the department (~~shall~~) must
30 establish the temporary funding of certain state fund vocational
31 costs through the medical aid account to ensure the appropriate
32 assessments to employers for the costs of their claims for vocational
33 services in accordance with RCW 51.32.0991.

34 (b) In implementing the pilot program, the department (~~shall~~)
35 must:

36 (i) Establish a vocational initiative project that includes
37 participation by the department as a partner with WorkSource, the
38 established state system that administers the federal workforce

1 investment act of 1998. As a partner, the department (~~shall~~) must
2 place vocational professional full-time employees at pilot WorkSource
3 locations; refer some workers for vocational services to these
4 vocational professionals; and work with employers in work source
5 pilot areas to market the benefits of on-the-job training programs
6 and with community colleges to reserve slots in high employer demand
7 programs of study as defined in RCW 28B.50.030. These on-the-job
8 training programs and community college slots may be considered by
9 both department and private sector vocational professionals for
10 vocational plan development. The department will also assist
11 stakeholders in developing additional vocational training programs in
12 various industries, including but not limited to agriculture and
13 construction. These programs will expand the choices available to
14 injured workers in developing their vocational training plans with
15 the assistance of vocational professionals.

16 (ii) Develop and maintain a register of state fund and self-
17 insured workers who have been retrained or have selected any of the
18 vocational options described in this section for at least the
19 duration of the pilot program.

20 (iii) Create a vocational rehabilitation subcommittee made up of
21 members appointed by the director for at least the duration of the
22 pilot program. This subcommittee (~~shall~~) must provide the business
23 and labor partnership needed to maintain focus on the intent of the
24 pilot program, as described in this section, and provide consistency
25 and transparency to the development of rules and policies. The
26 subcommittee (~~shall~~) must report to the director at least annually
27 and recommend to the director and the legislature any additional
28 statutory changes needed, which may include extension of the pilot
29 period. The subcommittee (~~shall~~) must provide input and oversight
30 with the department concerning the study required under (b) of this
31 subsection. The subcommittee (~~shall~~) must provide recommendations
32 for additional changes or incentives for injured workers to return to
33 work with their employer of injury. The subcommittee (~~shall~~) must
34 also consider options that, under limited circumstances, would allow
35 injured workers to attend baccalaureate institutions under their
36 vocational rehabilitation plans and, by December 31, 2013, the
37 subcommittee (~~shall~~) must provide recommendations to the director
38 and the legislature on statutory changes needed to develop those
39 options.

1 (iv) In collaboration with the subcommittee, the department
2 (~~shall~~) must develop an annual report concerning Washington's
3 workers' compensation vocational rehabilitation system to the
4 legislature with the final report due by December 1, (~~2015~~) 2014.
5 The final report (~~shall~~) must include an assessment and
6 recommendations for further legislative action.

7 (2)(a) For the purposes of this section, the day the worker
8 commences vocational plan development means the date the department
9 or self-insurer notifies the worker of his or her eligibility for
10 plan development services or of an eligibility determination in
11 response to a dispute of a vocational decision.

12 (b) When the supervisor or supervisor's designee has decided that
13 vocational rehabilitation is both necessary and likely to make the
14 worker employable at gainful employment, he or she (~~shall~~) must be
15 provided with services necessary to develop a vocational plan that,
16 if completed, would render the worker employable. The vocational
17 professional assigned to the claim (~~shall~~) must, at the initial
18 meeting with the worker, fully inform the worker of the return-to-
19 work priorities set forth in RCW 51.32.095(2) and of his or her
20 rights and responsibilities under the workers' compensation
21 vocational system. The department (~~shall~~) must provide tools to the
22 vocational professional for communicating this and other information
23 required by RCW 51.32.095 and this section to the worker.

24 (c) On the date the worker commences vocational plan development,
25 the department (~~shall~~) must also inform the employer in writing of
26 the employer's right to make a valid return-to-work offer during the
27 first fifteen days following the commencement of vocational plan
28 development. However, at the sole discretion of the supervisor or the
29 supervisor's designee, an employer may be granted an extension of
30 time of up to ten additional days to make a valid return-to-work
31 offer. The additional days may be allowed by the department with or
32 without a request from the employer. The extension may only be
33 granted if the employer made a return-to-work offer to the worker
34 within fifteen days of the date the worker commenced vocational plan
35 development that met some but not all of the requirements in this
36 section. To be valid, the offer must be for bona fide employment with
37 the employer of injury, consistent with the worker's documented
38 physical and mental restrictions as provided by the worker's health
39 care provider. When the employer makes a valid return-to-work offer,
40 the vocational plan development services and temporary total

1 disability compensation (~~shall be~~) are terminated effective on the
2 starting date for the job without regard to whether the worker
3 accepts the return-to-work offer.

4 (d) Following the time period described in (c) of this
5 subsection, the employer may still provide, and the worker may
6 accept, any valid return-to-work offer. The worker's acceptance of
7 such an offer (~~shall~~) must result in the termination of vocational
8 plan development or implementation services and temporary total
9 disability compensation effective the day the employment begins.

10 (3)(a) All vocational plans must contain an accountability
11 agreement signed by the worker detailing expectations regarding
12 progress, attendance, and other factors influencing successful
13 participation in the plan. Failure to abide by the agreed
14 expectations (~~shall~~) must result in suspension of vocational
15 benefits pursuant to RCW 51.32.110, including the opportunity for the
16 worker to demonstrate good cause.

17 (b) Any formal education included as part of the vocational plan
18 must be for an accredited or licensed program or other program
19 approved by the department. The department (~~shall~~) must develop
20 rules that provide criteria for the approval of nonaccredited or
21 unlicensed programs.

22 (c) The vocational plan for an individual worker must be
23 completed and submitted to the department within ninety days of the
24 day the worker commences vocational plan development. The department
25 may extend the ninety days for good cause. Criteria for good cause
26 (~~shall~~) must be provided in rule. The frequency and reasons for
27 good cause extensions (~~shall~~) must be reported to the subcommittee
28 created under subsection (1) (b)(iii) of this section.

29 (d) Costs for the vocational plan may include books, tuition,
30 fees, supplies, equipment, child or dependent care, training fees for
31 on-the-job training, the cost of furnishing tools and other equipment
32 necessary for self-employment or reemployment, and other necessary
33 expenses in an amount not to exceed twelve thousand dollars. This
34 amount (~~shall~~) must be adjusted effective July 1 of each year for
35 vocational plans or retraining benefits available under subsection
36 (4)(b) of this section approved on or after this date but before June
37 30 of the next year based on the average percentage change in tuition
38 for the next fall quarter for all Washington state community
39 colleges.

1 (e) The duration of the vocational plan (~~shall~~) may not exceed
2 two years from the date the plan is implemented. The worker (~~shall~~)
3 must receive temporary total disability compensation under RCW
4 51.32.090 and the cost of transportation while he or she is actively
5 and successfully participating in a vocational plan.

6 (f) If the worker is required to reside away from his or her
7 customary residence, the reasonable cost of board and lodging
8 (~~shall~~) must also be paid.

9 (4) Vocational plan development services (~~shall~~) must be
10 completed within ninety days of commencing. Except as provided in RCW
11 51.32.095(3), during vocational plan development the worker (~~shall~~)
12 must, with the assistance of a vocational professional, participate
13 in vocational counseling and occupational exploration to include, but
14 not be limited to, identifying possible job goals, training needs,
15 resources, and expenses, consistent with the worker's physical and
16 mental status. A vocational rehabilitation plan (~~shall~~) must be
17 developed by the worker and the vocational professional and submitted
18 to the department or self-insurer. Following this submission, the
19 worker (~~shall~~) must elect one of the following options:

20 (a) Option 1: The department or self-insurer implements and the
21 worker participates in the vocational plan developed by the
22 vocational professional and approved by the worker and the department
23 or self-insurer. For state fund claims, the department must review
24 and approve the vocational plan before implementation may begin. If
25 the department takes no action within fifteen days, the plan is
26 deemed approved. The worker may, within fifteen days of the
27 department's approval of the plan or of a determination that the plan
28 is valid following a dispute, elect option 2. However, in the sole
29 discretion of the supervisor or supervisor's designee, the department
30 may approve an election for option 2 benefits that was submitted in
31 writing within twenty-five days of the department's approval of the
32 plan or of a determination that the plan is valid following a dispute
33 if the worker provides a written explanation establishing that he or
34 she was unable to submit his or her election of option 2 benefits
35 within fifteen days. In no circumstance may the department approve of
36 an election for option 2 benefits that was submitted more than
37 twenty-five days after the department's approval of a retraining plan
38 or of a determination that a plan is valid following a dispute.

39 (i) Following successful completion of the vocational plan, any
40 subsequent assessment of whether vocational rehabilitation is both

1 necessary and likely to enable the injured worker to become
2 employable at gainful employment under RCW 51.32.095(1) (~~shall~~)
3 must include consideration of transferable skills obtained in the
4 vocational plan.

5 (ii) If a vocational plan is successfully completed on a claim
6 which is thereafter reopened as provided in RCW 51.32.160, the cost
7 and duration available for any subsequent vocational plan is limited
8 to that in subsection (3)(d) and (e) of this section, less that
9 previously expended.

10 (b) Option 2: The worker declines further vocational services
11 under the claim and receives an amount equal to six months of
12 temporary total disability compensation under RCW 51.32.090. The
13 award is payable in biweekly payments in accordance with the schedule
14 of temporary total disability payments, until such award is paid in
15 full. These payments (~~shall~~) may not include interest on the unpaid
16 balance. However, upon application by the worker, and at the
17 discretion of the department, the compensation may be converted to a
18 lump sum payment. The vocational costs defined in subsection (3)(d)
19 of this section (~~shall~~) must remain available to the worker, upon
20 application to the department or self-insurer, for a period of five
21 years. The vocational costs (~~shall~~) must, if expended, be available
22 for programs or courses at any accredited or licensed institution or
23 program from a list of those approved by the department for tuition,
24 books, fees, supplies, equipment, and tools, without department or
25 self-insurer oversight. The department (~~shall~~) must issue an order
26 as provided in RCW 51.52.050 confirming the option 2 election,
27 setting a payment schedule, and terminating temporary total
28 disability benefits effective the date of the order confirming that
29 election. The department (~~shall~~) must thereafter close the claim. A
30 worker who elects option 2 benefits (~~shall not be~~) is not entitled
31 to further temporary total, or to permanent total, disability
32 benefits except upon a showing of a worsening in the condition or
33 conditions accepted under the claim such that claim closure is not
34 appropriate, in which case the option 2 selection will be rescinded
35 and the amount paid to the worker will be assessed as an overpayment.
36 A claim that was closed based on the worker's election of option 2
37 benefits may be reopened as provided in RCW 51.32.160, but cannot be
38 reopened for the sole purpose of allowing the worker to seek
39 vocational assistance.

1 (i) If within five years from the date the option 2 order becomes
2 final, the worker is subsequently injured or suffers an occupational
3 disease or reopens the claim as provided in RCW 51.32.160, and
4 vocational rehabilitation is found both necessary and likely to
5 enable the injured worker to become employable at gainful employment
6 under RCW 51.32.095(1), the duration of any vocational plan under
7 subsection (3)(e) of this section (~~shall~~) may not exceed eighteen
8 months.

9 (ii) If the available vocational costs are utilized by the
10 worker, any subsequent assessment of whether vocational
11 rehabilitation is both necessary and likely to enable the injured
12 worker to become employable at gainful employment under RCW
13 51.32.095(1) (~~shall~~) must include consideration of the transferable
14 skills obtained.

15 (iii) If the available vocational costs are utilized by the
16 worker and the claim is thereafter reopened as provided in RCW
17 51.32.160, the cost available for any vocational plan is limited to
18 that in subsection (3)(d) of this section less that previously
19 expended.

20 (iv) Option 2 may only be elected once per worker.

21 (c) The director, in his or her sole discretion, may provide the
22 worker vocational assistance not to exceed that in subsection (3) of
23 this section, without regard to the worker's prior option selection
24 or benefits expended, where vocational assistance would prevent
25 permanent total disability under RCW 51.32.060.

26 (5)(a) As used in this section, "vocational plan interruption"
27 means an occurrence (~~which~~) that disrupts the plan to the extent
28 the employability goal is no longer attainable. "Vocational plan
29 interruption" does not include institutionally scheduled breaks in
30 educational programs, occasional absence due to illness, or
31 modifications to the plan which will allow it to be completed within
32 the cost and time provisions of subsection (3)(d) and (e) of this
33 section.

34 (b) When a vocational plan interruption is beyond the control of
35 the worker, the department or self-insurer (~~shall~~) must recommence
36 plan development. If necessary to complete vocational services, the
37 cost and duration of the plan may include credit for that expended
38 prior to the interruption. A vocational plan interruption is
39 considered outside the control of the worker when it is due to the
40 closure of the accredited institution, when it is due to a death in

1 the worker's immediate family, or when documented changes in the
2 worker's accepted medical conditions prevent further participation in
3 the vocational plan.

4 (c) When a vocational plan interruption is the result of the
5 worker's actions, the worker's entitlement to benefits (~~shall~~) must
6 be suspended in accordance with RCW 51.32.110, including the
7 opportunity for the worker to demonstrate good cause. If plan
8 development or implementation is recommenced, the cost and duration
9 of the plan (~~shall~~) may not include credit for that expended prior
10 to the interruption. A vocational plan interruption is considered a
11 result of the worker's actions when it is due to the failure to meet
12 attendance expectations set by the training or educational
13 institution, failure to achieve passing grades or acceptable
14 performance review, unaccepted or postinjury conditions that prevent
15 further participation in the vocational plan, or the worker's failure
16 to abide by the accountability agreement per subsection (3)(a) of
17 this section.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.32
19 RCW to read as follows:

20 (1) Through the collaboration of the vocational rehabilitation
21 subcommittee established in RCW 51.32.099, certain vocational
22 rehabilitation benefits and options have been identified as
23 permanently needed to support appropriate outcomes for eligible
24 injured workers. To continue the partnership of business and labor
25 with regard to best practices in the provision of vocational services
26 and to identify further improvements to Washington's vocational
27 rehabilitation system and benefits, the director must appoint a
28 vocational rehabilitation advisory committee to consist of at least
29 one member representing employers insured by the state fund, one
30 member representing self-insured employers, and two members
31 representing workers. The appointments must be made from lists of
32 nominations provided by statewide business, self-insured employers,
33 and labor organizations.

34 (2)(a) For the purposes of this section, the day the worker
35 commences vocational plan development means the date the department
36 or self-insurer notifies the worker of his or her eligibility for
37 plan development services or of an eligibility determination in
38 response to a dispute of a vocational decision.

1 (b) When the supervisor or supervisor's designee has decided that
2 vocational rehabilitation is both necessary and likely to make the
3 worker employable at gainful employment, he or she must be provided
4 with services necessary to develop a vocational plan that, if
5 completed, would render the worker employable. The vocational
6 professional assigned to the claim must, at the initial meeting with
7 the worker, fully inform the worker of the return-to-work priorities
8 set forth in RCW 51.32.095(2) and of his or her rights and
9 responsibilities under the workers' compensation vocational system.
10 The department must provide tools to the vocational professional for
11 communicating this and other information required by RCW 51.32.095
12 and this section to the worker.

13 (c) On the date the worker commences vocational plan development,
14 the department must also inform the employer in writing of the
15 employer's right to make a valid return-to-work offer during the
16 first fifteen days following the commencement of vocational plan
17 development. However, at the sole discretion of the supervisor or the
18 supervisor's designee, an employer may be granted an extension of
19 time of up to ten additional days to make a valid return-to-work
20 offer. The additional days may be allowed by the department with or
21 without a request from the employer. The extension may only be
22 granted if the employer made a return-to-work offer to the worker
23 within fifteen days of the date the worker commenced vocational plan
24 development that met some but not all of the requirements in this
25 section. To be valid, the offer must be for bona fide employment with
26 the employer of injury, consistent with the worker's documented
27 physical and mental restrictions as provided by the worker's health
28 care provider. When the employer makes a valid return-to-work offer,
29 the vocational plan development services and temporary total
30 disability compensation must be terminated effective on the starting
31 date for the job without regard to whether the worker accepts the
32 return-to-work offer.

33 (d) Following the time period described in (c) of this
34 subsection, the employer may still provide, and the worker may
35 accept, any valid return-to-work offer. The worker's acceptance of
36 such an offer must result in the termination of vocational plan
37 development or implementation services and temporary total disability
38 compensation effective the day the employment begins.

39 (3)(a) All vocational plans must contain an accountability
40 agreement signed by the worker detailing expectations regarding

1 progress, attendance, and other factors influencing successful
2 participation in the plan. Failure to abide by the agreed
3 expectations must result in suspension of vocational benefits
4 pursuant to RCW 51.32.110, including the opportunity for the worker
5 to demonstrate good cause.

6 (b) Any formal education included as part of the vocational plan
7 must be for an accredited or licensed program or other program
8 approved by the department. The department must develop rules that
9 provide criteria for the approval of nonaccredited or unlicensed
10 programs.

11 (c) The vocational plan for an individual worker must be
12 completed and submitted to the department within ninety days of the
13 day the worker commences vocational plan development. The department
14 may extend the ninety days for good cause. Criteria for good cause
15 must be provided in rule.

16 (d) Costs for the vocational plan may include books, tuition,
17 fees, supplies, equipment, child or dependent care, training fees for
18 on-the-job training, the cost of furnishing tools and other equipment
19 necessary for self-employment or reemployment, and other necessary
20 expenses in an amount not to exceed seventeen thousand five hundred
21 dollars. This amount must be adjusted effective July 1st of each year
22 for vocational plans or retraining benefits available under
23 subsection (4)(b) of this section approved on or after this date but
24 before June 30th of the next year based on the average percentage
25 change in tuition for the next fall quarter for all Washington state
26 community colleges. Effective July 1, 2016, and each July 1st
27 thereafter, the increase cannot exceed two percent per year, unless
28 the amount available would be less than one hundred fifty percent of
29 the average cost of a two-year community college training plan.
30 Effective July 1st following the calendar year in which the amount
31 available is less than one hundred fifty percent of the average cost
32 of a two-year community college plan, costs for newly approved plans
33 can be up to one hundred fifty percent of this community college plan
34 average. The average cost of two-year community college training
35 plans will be calculated by the department based on plans completed
36 during the preceding calendar year.

37 (e) The duration of the vocational plan may not exceed two years
38 from the date the plan is implemented. The worker must receive
39 temporary total disability compensation under RCW 51.32.090 and the

1 cost of transportation while he or she is actively and successfully
2 participating in a vocational plan.

3 (f) If the worker is required to reside away from his or her
4 customary residence, the reasonable cost of board and lodging must
5 also be paid.

6 (4) Except as provided in RCW 51.32.095(3), during vocational
7 plan development the worker must, with the assistance of a vocational
8 professional, participate in vocational counseling and occupational
9 exploration to include, but not be limited to, identifying possible
10 job goals, training needs, resources, and expenses, consistent with
11 the worker's physical and mental status. A vocational rehabilitation
12 plan must be developed by the worker and the vocational professional
13 and submitted to the department or self-insurer. Following this
14 submission, the worker must elect one of the following options:

15 (a) Option 1: The department or self-insurer implements and the
16 worker participates in the vocational plan developed by the
17 vocational professional and approved by the worker and the department
18 or self-insurer. For state fund claims, the department must review
19 and approve the vocational plan before implementation may begin. If
20 the department takes no action within fifteen days, the plan is
21 deemed approved. Beginning the date the department approves the plan,
22 or the date of a determination that the plan is valid following a
23 dispute, through completion of the first academic quarter or three
24 months' training, the worker may elect option 2. However, in the sole
25 discretion of the supervisor or supervisor's designee, the department
26 may approve an election for option 2 benefits that was submitted in
27 writing within twenty-five days of the end of the first academic
28 quarter or three months' training if the worker provides a written
29 explanation establishing that he or she was unable to submit his or
30 her election of option 2 benefits within fifteen days. In no
31 circumstance may the department approve of an election for option 2
32 benefits that was submitted more than twenty-five days after the end
33 of the first academic quarter or three months' training.

34 (i) Following successful completion of the vocational plan, any
35 subsequent assessment of whether vocational rehabilitation is both
36 necessary and likely to enable the injured worker to become
37 employable at gainful employment under RCW 51.32.095(1) must include
38 consideration of transferable skills obtained in the vocational plan.

39 (ii) If a vocational plan is successfully completed on a claim
40 which is thereafter reopened as provided in RCW 51.32.160, the cost

1 and duration available for any subsequent vocational plan is limited
2 to that in subsection (3)(d) and (e) of this section, less that
3 previously expended.

4 (b) Option 2: The worker declines further vocational services
5 under the claim and receives an amount equal to nine months of
6 temporary total disability compensation under RCW 51.32.090. The
7 award must be reduced by the amount of any temporary total disability
8 compensation paid for days starting with the first day of the
9 academic quarter or three months' training and for any days through
10 the date the department received the worker's written election of
11 option 2. The award is payable in biweekly payments in accordance
12 with the schedule of temporary total disability payments, until such
13 award is paid in full. These payments may not include interest on the
14 unpaid balance. However, upon application by the worker, and at the
15 discretion of the department, the compensation may be converted to a
16 lump sum payment. The vocational costs defined in subsection (3)(d)
17 of this section must remain available to the worker less any amount
18 expended for the worker's participation in the first academic quarter
19 or three months' training, upon application to the department or
20 self-insurer, for a period of five years. The vocational costs must,
21 if expended, be available for programs or courses at any accredited
22 or licensed institution or program from a list of those approved by
23 the department for tuition, books, fees, supplies, equipment, and
24 tools, without department or self-insurer oversight. Up to ten
25 percent of the total funds available to the worker can be used for
26 vocational counseling and job placement services. The department must
27 issue an order as provided in RCW 51.52.050 confirming the option 2
28 election, setting a payment schedule, and terminating temporary total
29 disability benefits effective the date of the order confirming that
30 election. The department must thereafter close the claim. A worker
31 who elects option 2 benefits is not entitled to further temporary
32 total, or to permanent total, disability benefits except upon a
33 showing of a worsening in the condition or conditions accepted under
34 the claim such that claim closure is not appropriate, in which case
35 the option 2 selection must be rescinded and the amount paid to the
36 worker must be assessed as an overpayment. A claim that was closed
37 based on the worker's election of option 2 benefits may be reopened
38 as provided in RCW 51.32.160, but cannot be reopened for the sole
39 purpose of allowing the worker to seek vocational assistance.

1 (i) If, within five years from the date the option 2 order
2 becomes final, the worker is subsequently injured or suffers an
3 occupational disease or reopens the claim as provided in RCW
4 51.32.160, and vocational rehabilitation is found both necessary and
5 likely to enable the injured worker to become employable at gainful
6 employment under RCW 51.32.095(1), the duration of any vocational
7 plan under subsection (3)(e) of this section may not exceed fifteen
8 months.

9 (ii) If the available vocational costs are utilized by the
10 worker, any subsequent assessment of whether vocational
11 rehabilitation is both necessary and likely to enable the injured
12 worker to become employable at gainful employment under RCW
13 51.32.095(1) must include consideration of the transferable skills
14 obtained.

15 (iii) If the available vocational costs are utilized by the
16 worker and the claim is thereafter reopened as provided in RCW
17 51.32.160, the cost available for any vocational plan is limited to
18 that in subsection (3)(d) of this section less that previously
19 expended.

20 (iv) Option 2 may only be elected once per worker.

21 (c) The director, in his or her sole discretion, may provide the
22 worker vocational assistance not to exceed that in subsection (3) of
23 this section, without regard to the worker's prior option selection
24 or benefits expended, where vocational assistance would prevent
25 permanent total disability under RCW 51.32.060.

26 (5)(a) "Vocational plan interruption" for the purposes of this
27 section means an occurrence which disrupts the plan to the extent the
28 employability goal is no longer attainable. "Vocational plan
29 interruption" does not include institutionally scheduled breaks in
30 educational programs, occasional absence due to illness, or
31 modifications to the plan which will allow it to be completed within
32 the cost and time provisions of subsection (3)(d) and (e) of this
33 section.

34 (b) When a vocational plan interruption is beyond the control of
35 the worker, the department or self-insurer must recommence plan
36 development. If necessary to complete vocational services, the cost
37 and duration of the plan may include credit for that expended prior
38 to the interruption. A vocational plan interruption is considered
39 outside the control of the worker when it is due to the closure of
40 the accredited institution, when it is due to a death in the worker's

1 immediate family, or when documented changes in the worker's accepted
2 medical conditions prevent further participation in the vocational
3 plan.

4 (c) When a vocational plan interruption is the result of the
5 worker's actions, the worker's entitlement to benefits must be
6 suspended in accordance with RCW 51.32.110, including the opportunity
7 for the worker to demonstrate good cause. If plan development or
8 implementation is recommenced, the cost and duration of the plan may
9 not include credit for that expended prior to the interruption. A
10 vocational plan interruption is considered a result of the worker's
11 actions when it is due to the failure to meet attendance expectations
12 set by the training or educational institution, failure to achieve
13 passing grades or acceptable performance review, unaccepted or
14 postinjury conditions that prevent further participation in the
15 vocational plan, or the worker's failure to abide by the
16 accountability agreement in subsection (3)(a) of this section.

17 (6) Costs paid for vocational services and plans must be
18 chargeable to the employer's cost experience or must be paid by the
19 self-insurer, as the case may be. For state fund vocational plans
20 implemented on or after January 1, 2008, the costs may be paid from
21 the medical aid fund at the sole discretion of the director under the
22 following circumstances:

23 (a) The worker previously participated in a vocational plan or
24 selected a worker option as described in RCW 51.32.099(4) or in
25 subsection (4) of this section;

26 (b) The worker's prior vocational plan or selected option was
27 based on an approved plan or option on or after January 1, 2008;

28 (c) For state fund employers, the date of injury or disease
29 manifestation of the subsequent claim is within the period of time
30 used to calculate their experience factor;

31 (d) The subsequent claim is for an injury or occupational disease
32 that resulted from employment and work-related activities beyond the
33 worker's documented restrictions.

34 (7) The vocational plan costs payable from the medical aid fund
35 must include the costs of temporary total disability benefits, except
36 those payable from the supplemental pension fund, from the date the
37 vocational plan is implemented to the date the worker completes the
38 plan or ceases participation. The vocational costs paid from the
39 medical aid fund may not be charged to the state fund employer's cost
40 experience.

1 **Sec. 6.** RCW 51.44.040 and 2005 c 475 s 1 are each amended to
2 read as follows:

3 (1) There (~~shall be~~) is in the office of the state
4 treasurer(~~(r)~~) a fund to be known and designated as the "second
5 injury fund," which (~~shall~~) may be used only for the purpose of
6 defraying charges against (~~it~~) employers and for supporting return-
7 to-work outcomes for injured workers as provided in RCW 51.16.120,
8 51.32.095(3), and 51.32.250. The fund (~~shall~~) must be administered
9 by the director. The state treasurer (~~shall~~) must be the custodian
10 of the second injury fund and (~~shall be~~) is authorized to disburse
11 moneys from it only upon written order of the director.

12 (2) Payments to the second injury fund from the accident fund
13 (~~shall~~) must be made pursuant to rules adopted by the director.
14 Costs of these payments may not affect the experience rating of
15 employers insured by the state fund.

16 (3)(a) Assessments for the second injury fund (~~shall~~) must be
17 imposed on self-insurers pursuant to rules adopted by the director.
18 Such rules (~~shall~~) must provide for at least the following:

19 (i) Except as provided in (a)(ii) of this subsection, the amount
20 assessed each self-insurer must be in the proportion that the
21 payments made from the fund on account of claims made against self-
22 insurers bears to the total sum of payments from the fund.

23 (ii) Except as provided in section 2, chapter 475, Laws of 2005,
24 beginning with assessments imposed on or after July 1, 2009, the
25 department (~~shall~~) must experience rate the amount assessed each
26 self-insurer as long as the aggregate amount assessed is in the
27 proportion that the payments made from the fund on account of claims
28 made against self-insurers bears to the total sum of payments from
29 the fund. The experience rating factor must provide equal weight to
30 the ratio between expenditures made by the second injury fund for
31 claims of the self-insurer to the total expenditures made by the
32 second injury fund for claims of all self-insurers for the prior
33 three fiscal years and the ratio of workers' compensation claim
34 payments under this title made by the self-insurer to the total
35 worker's compensation claim payments made by all self-insurers under
36 this title for the prior three fiscal years. The weighted average of
37 these two ratios must be divided by the latter ratio to arrive at the
38 experience factor.

39 (b) For purposes of this subsection, "expenditures made by the
40 second injury fund" mean the costs and charges described under RCW

1 51.32.250 and 51.16.120 (~~(3)~~ and) (4), and the amounts assessed to
2 the second injury fund as described under RCW 51.16.120(1). Under no
3 circumstances does "expenditures made by the second injury fund"
4 include any subsequent payments, assessments, or adjustments for
5 pensions, where the applicable second injury fund entitlement was
6 established outside of the three fiscal years.

7 NEW SECTION. **Sec. 7.** The department of labor and industries is
8 authorized to establish and adopt rules governing the eligibility for
9 and administration of benefits available under RCW 51.16.120,
10 51.32.095, 51.32.099, 51.44.040, and section 5 of this act.

11 NEW SECTION. **Sec. 8.** The department of labor and industries
12 must conduct a study of injured workers whose employers participate
13 in the incentives provided in RCW 51.32.095(3) to determine the
14 impact on return-to-work outcomes, long-term disability, and claim
15 costs. By December 1, 2018, and in compliance with RCW 43.01.036, the
16 department must submit a report to the appropriate committees of the
17 legislature that details the results of the study conducted under
18 this section.

19 NEW SECTION. **Sec. 9.** Sections 1, 2, and 6 of this act apply to
20 all workers' compensation claims that are open on or after January 1,
21 2016, without regard to the date of injury or occupational disease
22 manifestation.

23 NEW SECTION. **Sec. 10.** Section 5 of this act applies to all
24 claims commencing vocational plan development on or after July 31,
25 2015, without regard to the date of injury or occupational disease
26 manifestation.

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