
SENATE BILL 5516

State of Washington

64th Legislature

2015 Regular Session

By Senators Braun, Baumgartner, Rivers, Sheldon, Schoesler, Bailey,
and Honeyford

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

1 AN ACT Relating to compensation for injured workers; amending RCW
2 51.32.090; adding new sections to chapter 51.04 RCW; creating a new
3 section; and repealing RCW 51.04.063, 51.04.065, and 51.04.069.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.04
6 RCW to read as follows:

7 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of
8 this title, beginning September 1, 2015, the parties to an allowed
9 claim for benefits may enter into a voluntary settlement agreement as
10 provided in this section with respect to one or more allowed claims
11 for benefits under this title. All voluntary settlement agreements
12 must be approved by the board of industrial insurance appeals. The
13 voluntary settlement agreement may:

- 14 (i) Resolve a claim for all benefits other than medical;
15 (ii) Not subject any employer who is not a signatory to the
16 agreement to any responsibility or burden under any claim; and
17 (iii) Not be initiated until at least one hundred eighty days
18 have passed since the claim was received by the department or self-
19 insurer and the order allowing the claim is final and binding.

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

- 21 (i) For a self-insured claim, the worker and the employer; and

1 (ii) For a state fund claim, the worker, the employer, and the
2 department.

3 (c) For state fund claims, the department must negotiate the
4 settlement with the worker. Any voluntary settlement agreement
5 entered into under this section must be signed by the parties or
6 their representatives and must clearly state that the parties
7 understand and agree to the terms of the voluntary settlement
8 agreement. Unless one of the parties revokes consent to the
9 agreement, as provided in subsection (3) of this section, the
10 voluntary settlement agreement becomes final and binding thirty days
11 after approval of the agreement by the board of industrial insurance
12 appeals.

13 (d) A voluntary settlement agreement that has become final and
14 binding as provided in this section is binding on the department and
15 on all parties to the agreement as to its terms and the injuries and
16 occupational diseases to which the voluntary settlement applies. A
17 voluntary settlement agreement that has become final and binding is
18 not subject to appeal.

19 (2)(a) If a worker is not represented by an attorney at the time
20 of signing a voluntary settlement agreement, the parties must forward
21 a copy of the signed settlement agreement to the board with a request
22 for a conference with a settlement officer. Unless one of the parties
23 requests a later date, the settlement officer must convene a
24 conference within fourteen days after receipt of the request for the
25 limited purpose of receiving the voluntary settlement agreement of
26 the parties, explaining to the worker the benefits generally
27 available under this title, and explaining that a voluntary
28 settlement agreement may alter the benefits payable on a claim. In no
29 event may a settlement officer render legal advice to any party.

30 (b) Before approving the settlement agreement, the settlement
31 officer must ensure that the worker has an adequate understanding of
32 the settlement proposal and its consequences to the worker.

33 (c)(i) The settlement officer may approve a settlement agreement
34 only if the officer finds that the settlement is in the best interest
35 of the worker. When determining whether the settlement is in the best
36 interest of the worker, the settlement officer must consider the
37 following factors, taken as a whole, with no individual factor being
38 determinative:

39 (A) The nature and extent of the injuries and disabilities of the
40 worker;

1 (B) The age and life expectancy of the injured worker;

2 (C) Whether the injured worker has any health, disability, or
3 related insurance;

4 (D) Any other benefits the injured worker is receiving or is
5 entitled to receive and the effect a settlement agreement might have
6 on those benefits;

7 (E) The marital status of the injured worker; and

8 (F) The number of dependents of the injured worker.

9 (ii) Within seven days after the conference, the settlement
10 officer must issue an order allowing or rejecting the voluntary
11 settlement agreement. There is no appeal from the settlement
12 officer's decision.

13 (d) If the settlement officer issues an order allowing the
14 voluntary settlement agreement, the order must be submitted to the
15 board.

16 (3) If a worker is represented by an attorney at the time of
17 signing a voluntary settlement agreement, the parties may submit the
18 agreement directly to the board without the conference described in
19 this section.

20 (4) Upon receiving the voluntary settlement agreement, the board
21 must approve the agreement within thirty working days of receipt
22 unless it finds that the parties have not entered into the agreement
23 knowingly and willingly. If the board approves the agreement, it must
24 provide notice to the department of the binding terms of the
25 agreement and provide for placement of the agreement in the
26 applicable claim files.

27 (5) A party may revoke consent to the voluntary settlement
28 agreement by providing written notice to the other parties and the
29 board within thirty days after the date the agreement is approved by
30 the board.

31 (6) To the extent the worker is found to be entitled to temporary
32 total disability or permanent total disability benefits while a
33 voluntary settlement agreement is being negotiated, or during the
34 revocation period of an agreement, the benefits must be paid until
35 the agreement becomes final.

36 (7) A claim closed pursuant to a voluntary settlement agreement
37 can be reopened only upon a showing of worsening of the related
38 medical conditions under RCW 51.32.160 for medical treatment only.
39 Further temporary total, temporary partial, permanent partial, or

1 permanent total benefits are not payable under the same claim for
2 which a voluntary settlement has been approved by the board.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.04
4 RCW to read as follows:

5 (1) In calendar years 2018, 2023, and 2028, the department must
6 contract for an independent study of voluntary settlement agreements
7 approved by the board under this section. The study must be performed
8 by a researcher that has experience in workers' compensation systems.
9 When selecting the independent researcher, the department must
10 consult with the workers' compensation advisory committee. The study
11 must evaluate the quality and effectiveness of settlement agreements
12 of state fund and self-insured claims, provide information on the
13 impact of settlement agreements to the state fund and to self-insured
14 employers, and evaluate the outcomes of workers who have settled
15 their claims. The study must be submitted to the appropriate
16 committees of the legislature.

17 (2) The department must contract for an independent study of the
18 return to work provisions under RCW 51.32.090. The study must be
19 performed by a researcher that has experience in workers'
20 compensation systems. When selecting the independent researcher, the
21 department must consult with the workers' compensation advisory
22 committee. The study must evaluate the quality and effectiveness of
23 the return to work program and whether the program is being utilized
24 by employers, and evaluate the outcomes of workers participating in
25 the program. The study must be submitted to the appropriate
26 committees of the legislature by December 2018.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.04
28 RCW to read as follows:

29 The department must maintain copies of all voluntary settlement
30 agreements entered into between the parties and develop processes
31 under RCW 51.28.070 to furnish copies of such agreements to any party
32 contemplating any subsequent voluntary settlement agreement with the
33 worker on any claim. The department must also furnish claims
34 histories that include all prior permanent disability awards received
35 by the worker on any claims by body part and category or percentage
36 rating, as applicable. Copies of such agreements and claims histories
37 must be furnished within ten working days of a written request. An
38 employer may not consider a prior settlement agreement or claims

1 history when making a decision about hiring or the terms or
2 conditions of employment.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.04
4 RCW to read as follows:

5 If a worker has received a prior award of, or entered into a
6 voluntary settlement for, total or partial permanent disability
7 benefits, it is conclusively presumed that the medical condition
8 causing the prior permanent disability exists and is disabling at the
9 time of any subsequent industrial injury or occupational disease.
10 Except in the case of total permanent disability, the accumulation of
11 all permanent disability awards issued with respect to any one part
12 of the body in favor of the worker may not exceed one hundred percent
13 over the worker's lifetime. When entering into a voluntary settlement
14 agreement under this chapter, the department or self-insured employer
15 may exclude amounts paid to settle claims for prior portions of a
16 worker's permanent total or partial disability.

17 **Sec. 5.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
18 amended to read as follows:

19 (1) When the total disability is only temporary, the schedule of
20 payments contained in RCW 51.32.060 (1) and (2) (~~shall apply~~)
21 applies, so long as the total disability continues.

22 (2) Any compensation payable under this section for children not
23 in the custody of the injured worker as of the date of injury (~~shall~~
24 ~~be~~) is payable only to such person as actually is providing the
25 support for such child or children pursuant to the order of a court
26 of record providing for support of such child or children.

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

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

35 (ii) For claims for injuries occurring on or after May 7, 1993,
36 equal eighty percent of the actual difference between the worker's
37 present wages and earning power at the time of injury, but: (A) The
38 total of these payments and the worker's present wages may not exceed

1 one hundred fifty percent of the average monthly wage in the state as
2 computed under RCW 51.08.018; (B) the payments may not exceed one
3 hundred percent of the entitlement as computed under subsection (1)
4 of this section; and (C) the payments may not be less than the worker
5 would have received if (a)(i) of this subsection had been applicable
6 to the worker's claim.

7 (b) No compensation (~~shall~~) may be payable under this
8 subsection (3) unless the loss of earning power (~~shall~~) exceeds
9 five percent.

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

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

20 (b) (~~Whenever~~) The employer of injury (~~requests that~~) may
21 provide light duty or transitional work to a worker who is entitled
22 to temporary total disability under this chapter (~~be certified by a~~
23 physician or licensed advanced registered nurse practitioner as able
24 to perform available work other than his or her usual work,)). The
25 employer or the department must obtain from the physician or licensed
26 advanced registered nurse practitioner a statement confirming the
27 light duty or transitional work is consistent with the worker's
28 medical restrictions related to the injury. This statement should be
29 obtained before the start of the light duty or transitional work
30 unless the worker has already returned to work with the employer of
31 injury in which case the statement may be obtained following the
32 start date of the job. The employer (~~shall~~) must furnish to the
33 physician or licensed advanced registered nurse practitioner, with a
34 copy to the worker, a statement describing the work (~~available~~)
35 with the employer of injury in terms that will enable the physician
36 or licensed advanced registered nurse practitioner to relate the
37 physical activities of the job to the worker's disability. The
38 physician or licensed advanced registered nurse practitioner (~~shall~~
39 then determine)) must confirm whether the worker is physically able
40 to perform the work described. The worker's temporary total

1 disability payments (~~shall continue until the worker is released by~~
2 ~~his or her physician or licensed advanced registered nurse~~
3 ~~practitioner for the work, and begins the work with the employer of~~
4 ~~injury. If~~) must stop effective the date the light duty or
5 transitional job starts. Temporary total disability payments resume
6 if the work thereafter comes to an end before the worker's recovery
7 is sufficient in the judgment of his or her physician or licensed
8 advanced registered nurse practitioner to permit him or her to return
9 to his or her usual job, or to perform other available work offered
10 by the employer of injury(~~, the worker's temporary total disability~~
11 ~~payments shall be resumed~~). Should the available work described,
12 once undertaken by the worker, impede his or her recovery to the
13 extent that in the judgment of his or her physician or licensed
14 advanced registered nurse practitioner he or she should not continue
15 to work, the worker's temporary total disability payments (~~shall~~)
16 must be resumed when the worker ceases such work at the direction of
17 the physician or licensed advanced registered nurse practitioner.

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

35 (d) If an employer insured with the department offers a worker
36 work pursuant to this subsection (4) and the worker must be provided
37 with training or instruction to be qualified to perform the offered
38 work, the employer (~~shall be~~) is eligible for a reimbursement from
39 the department for any tuition, books, fees, and materials required
40 for that training or instruction, up to a maximum of one thousand

1 dollars. Reimbursing an employer for the costs of such training or
2 instruction does not constitute a determination by the department
3 that the worker is eligible for vocational services authorized by RCW
4 51.32.095 and 51.32.099.

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

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

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

35 (h) An employer (~~shall~~) may not receive any wage subsidies or
36 reimbursement of any expenses pursuant to this subsection (4) unless
37 the employer has completed and submitted the reimbursement request on
38 forms developed by the department, along with all related information
39 required by department rules. No wage subsidy or reimbursement
40 (~~shall~~) may be paid to an employer who fails to submit a form for

1 such payment within one year of the date the work was performed. In
2 no event (~~shall~~) may an employer receive wage subsidy payments or
3 reimbursements of any expenses pursuant to this subsection (4) unless
4 the worker's physician or licensed advanced registered nurse
5 practitioner has restricted him or her from performing his or her
6 usual work and the worker's physician or licensed advanced registered
7 nurse practitioner has released him or her to perform the work
8 offered.

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

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

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

29 (l) In the event of any dispute as to the validity of the work
30 offered or as to the worker's ability to perform the available work
31 offered by the employer, the department (~~shall~~) must make the final
32 determination pursuant to an order that contains the notice required
33 by RCW 51.52.060 and that is subject to appeal subject to RCW
34 51.52.050.

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

37 (6) The department (~~shall~~) must create a Washington stay-at-
38 work account (~~which shall be~~) that is funded by assessments of
39 employers insured through the state fund for the costs of the
40 payments authorized by subsection (4) of this section and for the

1 cost of creating a reserve for anticipated liabilities. Employers may
2 collect up to one-half the fund assessment from workers.

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

11 (8) Should a worker suffer a temporary total disability and
12 should his or her employer at the time of the injury continue to pay
13 him or her the wages which he or she was earning at the time of such
14 injury, such injured worker (~~shall~~) may not receive any payment
15 provided in subsection (1) of this section during the period his or
16 her employer (~~shall~~~~so~~) pays such wages(~~+~~~~PROVIDED, That~~).
17 However, holiday pay, vacation pay, sick leave, or other similar
18 benefits (~~shall~~) are not (~~be~~) deemed to be payments by the
19 employer for the purposes of this subsection.

20 (9) In no event (~~shall~~) may the monthly payments provided in
21 this section:

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

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

31 (b) For dates of injury or disease manifestation after July 1,
32 2008, be less than fifteen percent of the average monthly wage in the
33 state as computed under RCW 51.08.018 plus an additional ten dollars
34 per month if the worker is married and an additional ten dollars per
35 month for each child of the worker up to a maximum of five children.
36 However, if the monthly payment computed under this subsection (9)(b)
37 is greater than one hundred percent of the wages of the worker as

1 determined under RCW 51.08.178, the monthly payment due to the worker
2 (~~shall~~) must be equal to the greater of the monthly wages of the
3 worker or the minimum benefit set forth in this section on June 30,
4 2008.

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

8 (11) The department (~~shall~~) must adopt rules as necessary to
9 implement this section.

10 NEW SECTION. Sec. 6. The department of labor and industries may
11 adopt rules to implement this act.

12 NEW SECTION. Sec. 7. The following acts or parts of acts are
13 each repealed:

14 (1) RCW 51.04.063 (Injured worker options—Claim resolution
15 structured settlement agreements) and 2014 c 142 s 2, 2013 c 23 s
16 104, & 2011 1st sp.s. c 37 s 302;

17 (2) RCW 51.04.065 (Claim resolution structured settlement
18 agreements—Availability of copies) and 2011 1st sp.s. c 37 s 303; and

19 (3) RCW 51.04.069 (Claim resolution structured settlement
20 agreements—Reports and studies) and 2011 1st sp.s. c 37 s 306.

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