
SENATE BILL 5513

State of Washington

64th Legislature

2015 Regular Session

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

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

1 AN ACT Relating to creating the workers' recovery act by amending
2 provisions governing structured settlements by lowering age barriers
3 and clarifying legislative intent; amending RCW 51.04.063; and
4 creating new sections.

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

6 **Sec. 1.** RCW 51.04.063 and 2014 c 142 s 2 are each amended to
7 read as follows:

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

17 (2)(a) As provided in this section, the parties to an allowed
18 claim may initiate and agree to resolve a claim with a structured
19 settlement for all benefits other than medical. Parties as defined in
20 (b) of this subsection may only initiate claim resolution structured
21 settlements if at least one hundred eighty days have passed since the

1 claim was received by the department or self-insurer and the order
2 allowing the claim is final and binding. All requirements of this
3 title regarding entitlement to and payment of benefits will apply
4 during this period. All claim resolution structured settlement
5 agreements must be approved by the board of industrial insurance
6 appeals.

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

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

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

16 (c) The claim resolution structured settlement agreements
17 (~~shall~~) must:

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

21 (ii) Provide a periodic payment schedule to the worker equal to
22 at least twenty-five percent but not more than one hundred fifty
23 percent of the average monthly wage in the state pursuant to RCW
24 51.08.018, except for the initial payment which may be up to six
25 times the average monthly wage in the state pursuant to RCW
26 51.08.018;

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

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

30 (v) Not subject any funds covered under this title to any
31 responsibility or burden without prior approval from the director or
32 designee.

33 (d) For state fund claims, the department (~~shall~~) must
34 negotiate the claim resolution structured settlement agreement with
35 the worker or their representative and with the employer or employers
36 and their representative or representatives.

37 (e) For self-insured claims, the self-insured employer shall
38 negotiate the agreement with the worker or his or her representative.
39 Workers of self-insured employers who are unrepresented may request

1 that the office of the ombuds for self-insured injured workers
2 provide assistance or be present during negotiations.

3 (f) Terms of the agreement may include the parties' agreement
4 that the claim (~~shall~~) must remain open for future necessary
5 medical or surgical treatment related to the injury where there is a
6 reasonable expectation such treatment is necessary. The parties may
7 also agree that specific future treatment (~~shall~~) must be provided
8 without the application required in RCW 51.32.160.

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

13 (h) If a worker is not represented by an attorney at the time of
14 signing a claim resolution structured settlement agreement, the
15 parties must forward a copy of the signed agreement to the board with
16 a request for a conference with an industrial appeals judge. The
17 industrial appeals judge must schedule a conference with all parties
18 within fourteen days for the purpose of (i) reviewing the terms of
19 the proposed settlement agreement by the parties; and (ii) ensuring
20 the worker has an understanding of the benefits generally available
21 under this title and that a claim resolution structured settlement
22 agreement may alter the benefits payable on the claim or claims. The
23 judge may schedule the initial conference for a later date with the
24 consent of the parties.

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

28 (j) The industrial appeals judge may approve a claim resolution
29 structured settlement agreement only if the judge finds that the
30 agreement is in the best interest of the worker. When determining
31 whether the agreement is in the best interest of the worker, the
32 industrial appeals judge (~~shall~~) must consider the following
33 factors, taken as a whole, with no individual factor being
34 determinative:

35 (i) The nature and extent of the injuries and disabilities of the
36 worker;

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

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

1 (iv) The marital or domestic partnership status of the injured
2 worker.

3 (k) Within seven days after the conference, the industrial
4 appeals judge (~~shall~~) must issue an order allowing or rejecting the
5 claim resolution structured settlement agreement. There is no appeal
6 from the industrial appeals judge's decision.

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

10 (3) Upon receiving the agreement, the board (~~shall~~) must
11 approve it within thirty working days of receipt unless it finds
12 that:

13 (a) The parties have not entered into the agreement knowingly and
14 willingly;

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

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

19 (d) The agreement is the result of harassment or coercion; or
20 (e) The agreement is unreasonable as a matter of law.

21 (4) If a worker is represented by an attorney at the time of
22 signing a claim resolution structured settlement agreement, the
23 parties (~~shall~~) must submit the agreement directly to the board
24 without the conference described in this section. The requirements of
25 a claim resolution structured settlement agreement for the purposes
26 of subsection (3) of this section do not include the determination
27 under subsection (2)(j) of this section if a worker is represented by
28 an attorney at the time of signing a claim resolution structured
29 settlement agreement.

30 (5) If the board approves the agreement, it (~~shall~~) must
31 provide notice to all parties. The department (~~shall~~) must place
32 the agreement in the applicable claim file or files.

33 (6) A party may revoke consent to the claim resolution structured
34 settlement agreement by providing written notice to the other parties
35 and the board within thirty days after the date the agreement is
36 approved by the board.

37 (7) To the extent the worker is entitled to any benefits while a
38 claim resolution structured settlement agreement is being negotiated
39 or during the revocation period of an agreement, the benefits must be

1 paid pursuant to the requirements of this title until the agreement
2 becomes final.

3 (8) A claim resolution structured settlement agreement that meets
4 the conditions in this section and that has become final and binding
5 as provided in this section is binding on all parties to the
6 agreement as to its terms and the injuries and occupational diseases
7 to which the agreement applies. A claim resolution structured
8 settlement agreement that has become final and binding is not subject
9 to appeal.

10 (9) All payments made to a worker pursuant to a final claim
11 resolution structured settlement agreement must be reported to the
12 department as claims costs pursuant to this title. If a self-insured
13 employer contracts with a third-party administrator for claim
14 services and the payment of benefits under this title, the third-
15 party administrator (~~shall~~) must also disburse the structured
16 settlement payments pursuant to the agreement.

17 (10) Claims closed pursuant to a claim resolution structured
18 settlement agreement can be reopened pursuant to RCW 51.32.160 for
19 medical treatment only. Further temporary total, temporary partial,
20 permanent partial, or permanent total benefits are not payable under
21 the same claim or claims for which a claim resolution structured
22 settlement agreement has been approved by the board and has become
23 final.

24 (11) Parties aggrieved by the failure of any other party to
25 comply with the terms of a claim resolution structured settlement
26 agreement have one year from the date of failure to comply to
27 petition to the board. If the board determines that a party has
28 failed to comply with an agreement, it will order compliance and will
29 impose a penalty payable to the aggrieved party of up to twenty-five
30 percent of the monetary amount unpaid at the time the petition for
31 noncompliance was filed. The board will also decide on any disputes
32 as to attorneys' fees for services related to claim resolution
33 structured settlement agreements.

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

1 (13) All information related to individual claims resolution
2 structured settlement agreements submitted to the board of industrial
3 insurance appeals, other than final orders from the board of
4 industrial insurance appeals, is private and exempt from disclosure
5 under chapter 42.56 RCW.

6 (14) Information gathered during the claims resolution structured
7 settlement agreement process, including but not limited to forms
8 filled out by the parties and testimony during a claims resolution
9 structured settlement conference before the board of industrial
10 insurance appeals, is a statement made in the course of compromise
11 negotiations and is inadmissible in any future litigation.

12 NEW SECTION. **Sec. 2.** This act may be known and cited as the
13 workers' recovery act.

14 NEW SECTION. **Sec. 3.** The amendment to RCW 51.04.063(4) by this
15 act is an explicit restatement of the legislature's original intent
16 that a finding under RCW 51.04.063(2)(j) is required only when the
17 worker is not represented by an attorney at the time of signing a
18 claim resolution structured settlement agreement. Because this
19 provision is a clarification of the legislature's original intent, it
20 applies retroactively.

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