
HOUSE BILL 1492

State of Washington

66th Legislature

2019 Regular Session

By Representatives Sells, Ormsby, and Jenkins

Read first time 01/23/19. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to industrial insurance wage loss; amending RCW
2 51.08.178, 51.08.030, 51.32.010, 51.32.025, 51.32.060, 51.32.072, and
3 51.32.090; adding new sections to chapter 51.08 RCW; and adding new
4 sections to chapter 51.32 RCW.

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

6 **Sec. 1.** RCW 51.08.178 and 2007 c 297 s 1 are each amended to
7 read as follows:

8 (1) (a) For the purposes of this title, wages shall be calculated
9 in a fair and reasonable manner in order to reflect the worker's lost
10 earning capacity at the time of the worker's injury. The monthly
11 wages the worker was receiving from all employment at the time of
12 injury shall be the basis upon which compensation is computed unless
13 otherwise provided specifically in the statute concerned. For workers
14 who are working for more than one employer at the time of injury, the
15 wages for each job shall be calculated separately using the
16 appropriate method under this section and the amounts from all
17 employers shall then be combined.

18 (b) In cases where a worker's wages are fixed by the month, the
19 fixed monthly wage shall be used unless it does not fairly and
20 reasonably reflect the worker's lost earning capacity at the time of

1 injury, in which case the worker's wages shall be calculated under
2 subsection (5) of this section.

3 (c) In cases where the worker's wages are not fixed by the month,
4 they shall be determined ((~~by multiplying the daily wage the worker~~
5 ~~was receiving~~)) based on the pattern or frequency at which the
6 worker's employer makes wage payments to the worker, unless it does
7 not fairly and reasonably reflect the worker's lost earning capacity
8 at the time of the injury((~~÷~~

9 ~~(a) By five, if the worker was normally employed one day a week;~~

10 ~~(b) By nine, if the worker was normally employed two days a week;~~

11 ~~(c) By thirteen, if the worker was normally employed three days a~~
12 ~~week;~~

13 ~~(d) By eighteen, if the worker was normally employed four days a~~
14 ~~week;~~

15 ~~(e) By twenty-two, if the worker was normally employed five days~~
16 ~~a week;~~

17 ~~(f) By twenty-six, if the worker was normally employed six days a~~
18 ~~week;~~

19 ~~(g) By thirty, if the worker was normally employed seven days a~~
20 ~~week.))~~, in which case the worker's wages shall be calculated under
21 subsection (5) of this section.

22 (i) For workers who are paid monthly or semimonthly, the monthly
23 wage shall be determined by the gross wages paid for the most recent
24 three months divided by three.

25 (ii) For workers who are paid weekly, the monthly wage shall be
26 determined by the gross wages paid for the most recent thirteen weeks
27 divided by three.

28 (iii) For workers who are paid every two weeks, the monthly wage
29 shall be determined by the gross wages paid for the most recent
30 fourteen weeks divided by fourteen multiplied by four and one-half.

31 (iv) For workers whose wages are not fixed by the month and whose
32 employment with the employer started less than three months prior to
33 the date of injury, if the worker is paid weekly or semiweekly, the
34 monthly wage shall be determined by dividing the gross wages earned
35 for all complete weeks with the employer during the three months
36 prior to the date of injury by the number of complete weeks and
37 multiplied by four and one-half, except as provided under subsection
38 (3) of this section. If the worker is paid semimonthly, the wage
39 shall be determined based on the total number of complete pay periods
40 that the worker worked, divided by the number of pay periods

1 multiplied by two. If the worker is paid monthly, the wage shall be
2 determined using the wages for all complete months the worker worked
3 divided by the number of months. For purposes of this subsection, a
4 "complete week" means seven consecutive calendar days, regardless of
5 the number of days actually worked.

6 (d) (i) For workers paid weekly or semiweekly who have had a
7 substantial decrease or increase in their compensation paid during
8 the three months preceding the injury due to a change in the rate of
9 pay, hours, or a change of a similar nature, the monthly wage shall
10 be determined by dividing the gross wage earned for all complete
11 weeks since the change by the number of complete weeks and multiplied
12 by four and one-half, except as provided under subsection (3) of this
13 section. If there are no complete weeks since the start of the
14 substantial decrease or increase in compensation paid, the worker's
15 wages shall be calculated under subsection (5) of this section or
16 calculated based on the wages prior to the decrease or increase,
17 whichever approach more fairly and reasonably represents the worker's
18 lost earning capacity.

19 (ii) For workers paid semimonthly who have had a substantial
20 decrease or increase in their compensation paid during the three
21 months preceding the injury due to a change in the rate of pay,
22 hours, or a change of a similar nature, the monthly wage shall be
23 determined by dividing the gross wage earned for all complete pay
24 periods since the change by the number of complete pay periods
25 divided by the number of pay periods and multiplied by three, except
26 as provided under subsection (3) of this section. If there are no
27 complete pay periods since the start of the substantial decrease or
28 increase in compensation paid, the worker's wages shall be calculated
29 under subsection (5) of this section or calculated based on the wages
30 prior to the decrease or increase, whichever approach more fairly and
31 reasonably represents the worker's lost earning capacity.

32 (iii) For workers paid monthly who have had a substantial
33 decrease or increase in their compensation paid during the three
34 months preceding the injury due to a change in the rate of pay,
35 hours, or a change of a similar nature, the monthly wage shall be
36 determined using the wages earned for all complete months after the
37 change divided by the number of months, except as provided under
38 subsection (3) of this section. If there are no complete months since
39 the start of the substantial decrease or increase in compensation
40 paid, the worker's wages shall be calculated under subsection (5) of

1 this section or calculated based on the wages prior to the decrease
2 or increase, whichever approach more fairly and reasonably represents
3 the worker's lost earning capacity.

4 (iv) For purposes of this subsection, "substantial" as it applies
5 to a change in hours, means a change of five percent or more and only
6 includes changes due to an actual change in the worker's work
7 pattern, hours, or pay, but not due to unpaid sick leave, unpaid
8 vacation, temporary time off, or similar reasons for a change of
9 absence. For purposes of this subsection, "substantial" as it applies
10 to a change in the rate of pay means any change to the rate of pay.

11 (2) (a) For workers compensated in full by commissions, piecework
12 rates, or similar methods, the monthly wage shall be determined based
13 on the amount earned for work performed in the most recent three
14 months divided by three. However, if the worker's employment with the
15 employer started less than three months prior to the date of injury,
16 the monthly wage shall be determined by dividing the gross wages
17 earned for all complete weeks with the employer during the three
18 months prior to the date of injury by the number of complete weeks
19 and multiplied by four and one-half, except as provided under
20 subsection (3) of this section. For purposes of this subsection, a
21 "complete week" means seven consecutive calendar days, without regard
22 to the number of days actually worked.

23 (b) For workers who, in addition to an hourly, weekly, monthly,
24 or other regular wage, receive compensation for commissions,
25 piecework rates, or similar methods, the amount earned for the
26 commissions, piecework, or similar methods shall be added to the
27 wages calculated under subsection (1) of this section unless these
28 amounts are already included in the gross wages used in the
29 calculation.

30 (3) If a worker's lost earning capacity at the time of injury
31 cannot be fairly and reasonably determined using the methods listed
32 in subsection (1) or (2) of this section, the worker's wages shall
33 instead be calculated under either subsection (4) or (5) of this
34 section, using whichever of these methods most fairly and reasonably
35 represents the worker's lost earning capacity from all employment at
36 the time of injury.

37 (4) When the worker has been employed by the employer of injury
38 for at least three months but the worker's pattern with the employer
39 of injury for the three months immediately preceding the injury
40 includes a single or multiple days without wages that, when combined,

1 equals or exceeds ten percent of the worker's scheduled or typical
2 work days or hours, the monthly wages shall be determined by the
3 worker's highest calendar year's gross wages from the most recent
4 three calendar years divided by twelve, unless such a calculation
5 does not fairly and reasonably represent the worker's lost earning
6 capacity at the time of injury, in which case wages shall be
7 calculated under subsection (5) of this section.

8 (5) In cases where a monthly earning capacity cannot be
9 reasonably and fairly determined using subsections (1) through (4) of
10 this section, the monthly wage shall be computed on the basis of the
11 usual wage paid other employees of the employer with work patterns
12 and job titles consistent with that of the injured worker or, if
13 there are no other employees of the employer with a similar work
14 pattern and job title, the wages or compensation shall be based on
15 that paid other employees engaged in like or similar work within the
16 worker's relevant geographic area in the same or similar occupations.

17 (6) Earning capacity for business owners covered under this title
18 shall be calculated using subsections (1) through (4) of this section
19 unless the earning capacity cannot be fairly and reasonably
20 calculated, in which case they shall be calculated under subsection
21 (5) of this section.

22 (7) The term "wages" shall include overtime, shift differentials,
23 and paid leave, but shall not include bonuses, except as provided in
24 subsection (8) of this section. The term "wages" shall also include
25 the reasonable monetary value of board, housing, utilities, and fuel,
26 ~~((or other consideration of like nature received from the employer as~~
27 ~~part of the contract of hire, but shall not include overtime pay~~
28 ~~except in cases under subsection (2) of this section. As~~
29 ~~consideration of like nature to board, housing, and fuel, wages shall~~
30 ~~also include)) and the employer's payment or contributions, or~~
31 appropriate portions thereof, for health care benefits ~~((unless)).~~
32 For purposes of calculating the worker's temporary total or permanent
33 total disability rates, these amounts shall not be included in the
34 calculation as long as the employer continues ongoing and current
35 payment or contributions for these benefits at the same level or a
36 higher level as provided at the time of injury. ~~((However,))~~ Tips
37 shall also be considered wages only to the extent such tips are
38 reported to the employer for federal income tax purposes. ~~((The daily~~
39 ~~wage shall be the hourly wage multiplied by the number of hours the~~
40 ~~worker is normally employed. The number of hours the worker is~~

1 normally employed shall be determined by the department in a fair and
2 reasonable manner, which may include averaging the number of hours
3 worked per day.

4 ~~(2) In cases where (a) the worker's employment is exclusively~~
5 ~~seasonal in nature or (b) the worker's current employment or his or~~
6 ~~her relation to his or her employment is essentially part-time or~~
7 ~~intermittent, the monthly wage shall be determined by dividing by~~
8 ~~twelve the total wages earned, including overtime, from all~~
9 ~~employment in any twelve successive calendar months preceding the~~
10 ~~injury which fairly represent the claimant's employment pattern.~~

11 ~~(3))~~ (8) If, within the twelve months immediately preceding the
12 injury, the worker has received from the employer at the time of
13 injury a bonus ~~((as part of the contract of hire))~~, the average
14 monthly value of such bonus shall be included in determining the
15 worker's monthly wages.

16 ~~((4) In cases where a wage has not been fixed or cannot be~~
17 ~~reasonably and fairly determined, the monthly wage shall be computed~~
18 ~~on the basis of the usual wage paid other employees engaged in like~~
19 ~~or similar occupations where the wages are fixed.))~~ (9) For workers
20 who, in addition to their regular or primary employment and while
21 working at their regular or primary employment, work at a job or jobs
22 that are only worked by the worker at specific times of the year, the
23 annual average monthly amount the worker received at the additional
24 job or jobs during the twelve months prior to the injury shall be
25 added to the worker's wage. The earning capacity from the second job
26 shall be included in the wage calculation even where the worker is
27 not working at the second job on the date of injury.

28 **Sec. 2.** RCW 51.08.030 and 1986 c 293 s 1 are each amended to
29 read as follows:

30 "Child" means every natural born child, posthumous child,
31 stepchild, child legally adopted prior to the injury, child born
32 after the injury where conception occurred prior to the injury, and
33 dependent child ~~((in the legal custody and control))~~ of the worker,
34 all while under the age of eighteen years, or under the age of
35 twenty-three years while permanently enrolled at a full-time course
36 in an accredited school, and over the age of eighteen years if the
37 child is a dependent as a result of a physical, mental, or sensory
38 handicap.

1 **Sec. 3.** RCW 51.32.010 and 1977 ex.s. c 350 s 37 are each amended
2 to read as follows:

3 Each worker injured in the course of his or her employment, or
4 his or her family or dependents in case of death of the worker, shall
5 receive compensation in accordance with this chapter, and, except as
6 in this title otherwise provided, such payment shall be in lieu of
7 any and all rights of action whatsoever against any person
8 (~~(whomsoever: PROVIDED, That if an injured worker, or the surviving~~
9 ~~spouse of an injured worker shall not have the legal custody of a~~
10 ~~child for, or on account of whom payments are required to be made~~
11 ~~under this title, such payment or payments shall be made to the~~
12 ~~person or persons having the legal custody of such child but only for~~
13 ~~the periods of time after the department has been notified of the~~
14 ~~fact of such legal custody, and it shall be the duty of any such~~
15 ~~person or persons receiving payments because of legal custody of any~~
16 ~~child immediately to notify the department of any change in such~~
17 ~~legal custody)~~).

18 **Sec. 4.** RCW 51.32.025 and 2010 c 8 s 14008 are each amended to
19 read as follows:

20 (1) Any payments (~~(to or for)~~) on account of any child or children of
21 a deceased or temporarily or totally permanently disabled worker
22 pursuant to any of the provisions of this chapter (~~(51.32-RCW)~~) shall
23 terminate when any such child reaches the age of eighteen years
24 unless such child is a dependent invalid child or is permanently
25 enrolled at a full-time course in an accredited school(~~(, in which~~
26 ~~case such payments after age eighteen shall be made directly to such~~
27 ~~child)~~). Payments (~~(to)~~) for any dependent invalid child over the age
28 of eighteen years shall continue in the amount previously paid on
29 account of such child until he or she shall cease to be dependent.
30 Payments (~~(to)~~) for any child over the age of eighteen years
31 permanently enrolled at a full-time course in an accredited school
32 shall continue in the amount previously paid on account of such child
33 until the child reaches an age over that provided for in the
34 definition of "child" in this title or ceases to be permanently
35 enrolled whichever occurs first. Where the worker sustains an injury
36 or dies when any of the worker's children is over the age of eighteen
37 years and is either a dependent invalid child or is a child
38 permanently enrolled at a full-time course in an accredited school

1 the payment ((to—of)) on account of any such child shall be made as
2 herein provided.

3 (2) This section only applies to injuries before July 1, 2018,
4 and does not apply to injuries on or after July 1, 2018.

5 **Sec. 5.** RCW 51.32.060 and 2007 c 284 s 2 are each amended to
6 read as follows:

7 (1) For injuries before September 1, 2019, when the supervisor of
8 industrial insurance shall determine that permanent total disability
9 results from the injury, the worker shall receive monthly during the
10 period of such disability:

11 (a) If married at the time of injury, sixty-five percent of his
12 or her wages.

13 (b) If married with one child at the time of injury, sixty-seven
14 percent of his or her wages.

15 (c) If married with two children at the time of injury,
16 sixty-nine percent of his or her wages.

17 (d) If married with three children at the time of injury,
18 seventy-one percent of his or her wages.

19 (e) If married with four children at the time of injury,
20 seventy-three percent of his or her wages.

21 (f) If married with five or more children at the time of injury,
22 seventy-five percent of his or her wages.

23 (g) If unmarried at the time of the injury, sixty percent of his
24 or her wages.

25 (h) If unmarried with one child at the time of injury, sixty-two
26 percent of his or her wages.

27 (i) If unmarried with two children at the time of injury,
28 sixty-four percent of his or her wages.

29 (j) If unmarried with three children at the time of injury,
30 sixty-six percent of his or her wages.

31 (k) If unmarried with four children at the time of injury,
32 sixty-eight percent of his or her wages.

33 (l) If unmarried with five or more children at the time of
34 injury, seventy percent of his or her wages.

35 (2) For injuries before September 1, 2019, any period of time
36 where both husband and wife are entitled to compensation as
37 temporarily or totally disabled workers, only that spouse having the
38 higher wages of the two shall be entitled to claim their child or
39 children for compensation purposes.

1 (3) For injuries on or after September 1, 2019, when the
2 supervisor of industrial insurance determines that permanent total
3 disability results from the injury, the worker shall receive monthly
4 during the period of disability, seventy percent of his or her wages.

5 (4) In case of permanent total disability, if the character of
6 the injury is such as to render the worker so physically helpless as
7 to require the hiring of the services of an attendant, the department
8 shall make monthly payments to such attendant for such services as
9 long as such requirement continues, but such payments shall not
10 obtain or be operative while the worker is receiving care under or
11 pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

12 (~~(4)~~) (5) Should any further accident result in the permanent
13 total disability of an injured worker, he or she shall receive the
14 pension to which he or she would be entitled, notwithstanding the
15 payment of a lump sum for his or her prior injury.

16 (~~(5)~~) (6) In no event shall the monthly payments provided in
17 this section:

18 (a) Exceed the applicable percentage of the average monthly wage
19 in the state as computed under the provisions of RCW 51.08.018 as
20 follows:

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

26 (b) For dates of injury or disease manifestation after July 1,
27 2008, be less than fifteen percent of the average monthly wage in the
28 state as computed under RCW 51.08.018 plus an additional ten dollars
29 per month if a worker is married and an additional ten dollars per
30 month for each child of the worker up to a maximum of five children.
31 However, if the monthly payment computed under this subsection
32 (~~(5)~~) (6)(b) is greater than one hundred percent of the wages of
33 the worker as determined under RCW 51.08.178, the monthly payment due
34 to the worker shall be equal to the greater of the monthly wages of
35 the worker or the minimum benefit set forth in this section on June
36 30, 2008.

37 The limitations under this subsection shall not apply to the
38 payments provided for in subsection (~~(3)~~) (4) of this section.

1 ~~((6))~~ (7) In the case of new or reopened claims, if the
2 supervisor of industrial insurance determines that, at the time of
3 filing or reopening, the worker is voluntarily retired and is no
4 longer attached to the workforce, benefits shall not be paid under
5 this section.

6 ~~((7))~~ (8) The benefits provided by this section are subject to
7 modification under RCW 51.32.067.

8 **Sec. 6.** RCW 51.32.072 and 2011 1st sp.s. c 37 s 201 are each
9 amended to read as follows:

10 (1) Notwithstanding any other provision of law, every surviving
11 spouse and every permanently totally disabled worker or temporarily
12 totally disabled worker, if such worker was unmarried at the time of
13 the worker's injury or was then married but the marriage was later
14 terminated by judicial action, receiving a pension or compensation
15 for temporary total disability under this title pursuant to
16 compensation schedules in effect prior to July 1, 1971, shall after
17 July 1, 1975, through June 30, 2011, be paid fifty percent of the
18 average monthly wage in the state as computed under RCW 51.08.018 per
19 month and an amount equal to five percent of such average monthly
20 wage per month to such totally disabled worker if married at the time
21 of the worker's injury and the marriage was not later terminated by
22 judicial action, and an additional two percent of such average
23 monthly wage for each child of such totally disabled worker at the
24 time of injury ~~((in the legal custody of such totally disabled worker
25 or such surviving spouse))~~ up to a maximum of five such children. The
26 monthly payments such surviving spouse or totally disabled worker are
27 receiving pursuant to compensation schedules in effect prior to July
28 1, 1971 shall be deducted from the monthly payments above specified.

29 Where such a surviving spouse has remarried, ~~((or where any such
30 child of such worker, whether living or deceased, is not in the legal
31 custody of such worker or such surviving spouse))~~ there shall be paid
32 for the benefit of and on account of each such child a sum equal to
33 two percent of such average monthly wage up to a maximum of five such
34 children in addition to any payments theretofore paid under
35 compensation schedules in effect prior to July 1, 1971 for the
36 benefit of and on account of each such child. In the case of any
37 child or children of a deceased worker not leaving a surviving spouse
38 or where the surviving spouse has later died, there shall be paid for
39 the benefit of and on account of each such child a sum equal to two

1 percent of such average monthly wage up to a maximum of five such
2 children in addition to any payments theretofore paid under such
3 schedules for the benefit of and on account of each such child.

4 If the character of the injury or occupational disease is such as
5 to render the worker so physically helpless as to require the hiring
6 of the services of an attendant, the department shall make monthly
7 payments to such attendant for such services as long as such
8 requirement continues but such payments shall not obtain or be
9 operative while the worker is receiving care under or pursuant to the
10 provisions of this title except for care granted at the discretion of
11 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such
12 payments shall not be considered compensation nor shall they be
13 subject to any limitation upon total compensation payments.

14 No part of such additional payments shall be payable from the
15 accident fund.

16 The director shall pay monthly from the supplemental pension fund
17 such an amount as will, when added to the compensation theretofore
18 paid under compensation schedules in effect prior to July 1, 1971,
19 equal the amounts hereinabove specified.

20 In cases where money has been or shall be advanced to any such
21 person from the pension reserve, the additional amount to be paid
22 under this section shall be reduced by the amount of monthly pension
23 which was or is predicated upon such advanced portion of the pension
24 reserve.

25 (2) In addition to the adjustment under subsection (1) of this
26 section, further adjustments shall be made beginning July 1, 2012,
27 and on each July 1st thereafter. The adjustment shall be the
28 percentage change in the average monthly wage in the state under RCW
29 51.08.018 for the preceding calendar year, rounded to the nearest
30 whole cent.

31 (3) Compensation due for July 1, 2011, through June 30, 2012,
32 must be paid based on the average monthly wage in the state as
33 computed under RCW 51.08.018 on July 1, 2010.

34 **Sec. 7.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
35 amended to read as follows:

36 (1) When the total disability is only temporary, the schedule of
37 payments contained in RCW 51.32.060 (1) (~~and~~), (2), and (3) shall
38 apply, so long as the total disability continues.

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

6 ~~(3))~~ (a) As soon as recovery is so complete that the present
7 earning power of the worker, at any kind of work, is restored to that
8 existing at the time of the occurrence of the injury, the payments
9 shall cease. If and so long as the present earning power is only
10 partially restored, the payments shall:

11 (i) For claims for injuries that occurred before May 7, 1993,
12 continue in the proportion which the new earning power shall bear to
13 the old; or

14 (ii) For claims for injuries occurring on or after May 7, 1993,
15 equal eighty percent of the actual difference between the worker's
16 present wages and earning power at the time of injury, but: (A) The
17 total of these payments and the worker's present wages may not exceed
18 one hundred fifty percent of the average monthly wage in the state as
19 computed under RCW 51.08.018; (B) the payments may not exceed one
20 hundred percent of the entitlement as computed under subsection (1)
21 of this section; and (C) the payments may not be less than the worker
22 would have received if (a)(i) of this subsection had been applicable
23 to the worker's claim.

24 (b) No compensation shall be payable under this subsection
25 (~~(3))~~ (2) unless the loss of earning power shall exceed five
26 percent.

27 (c) The prior closure of the claim or the receipt of permanent
28 partial disability benefits shall not affect the rate at which loss
29 of earning power benefits are calculated upon reopening the claim.

30 ~~((4))~~ (3) (a) The legislature finds that long-term disability
31 and the cost of injuries is significantly reduced when injured
32 workers remain at work following their injury. To encourage employers
33 at the time of injury to provide light duty or transitional work for
34 their workers, wage subsidies and other incentives are made available
35 to employers insured with the department.

36 (b) Whenever the employer of injury requests that a worker who is
37 entitled to temporary total disability under this chapter be
38 certified by a physician or licensed advanced registered nurse
39 practitioner as able to perform available work other than his or her
40 usual work, the employer shall furnish to the physician or licensed

1 advanced registered nurse practitioner, with a copy to the worker, a
2 statement describing the work available with the employer of injury
3 in terms that will enable the physician or licensed advanced
4 registered nurse practitioner to relate the physical activities of
5 the job to the worker's disability. The physician or licensed
6 advanced registered nurse practitioner shall then determine whether
7 the worker is physically able to perform the work described. The
8 worker's temporary total disability payments shall continue until the
9 worker is released by his or her physician or licensed advanced
10 registered nurse practitioner for the work, and begins the work with
11 the employer of injury. If the work thereafter comes to an end before
12 the worker's recovery is sufficient in the judgment of his or her
13 physician or licensed advanced registered nurse practitioner to
14 permit him or her to return to his or her usual job, or to perform
15 other available work offered by the employer of injury, the worker's
16 temporary total disability payments shall be resumed. Should the
17 available work described, once undertaken by the worker, impede his
18 or her recovery to the extent that in the judgment of his or her
19 physician or licensed advanced registered nurse practitioner he or
20 she should not continue to work, the worker's temporary total
21 disability payments shall be resumed when the worker ceases such
22 work.

23 (c) To further encourage employers to maintain the employment of
24 their injured workers, an employer insured with the department and
25 that offers work to a worker pursuant to this subsection (~~((+4))~~) (3)
26 shall be eligible for reimbursement of the injured worker's wages for
27 light duty or transitional work equal to fifty percent of the basic,
28 gross wages paid for that work, for a maximum of sixty-six workdays
29 within a consecutive twenty-four month period. In no event may the
30 wage subsidies paid to an employer on a claim exceed ten thousand
31 dollars. Wage subsidies shall be calculated using the worker's basic
32 hourly wages or basic salary, and no subsidy shall be paid for any
33 other form of compensation or payment to the worker such as tips,
34 commissions, bonuses, board, housing, fuel, health care, dental care,
35 vision care, per diem, reimbursements for work-related expenses, or
36 any other payments. An employer may not, under any circumstances,
37 receive a wage subsidy for a day in which the worker did not actually
38 perform any work, regardless of whether or not the employer paid the
39 worker wages for that day.

1 (d) If an employer insured with the department offers a worker
2 work pursuant to this subsection (~~((4))~~) (3) and the worker must be
3 provided with training or instruction to be qualified to perform the
4 offered work, the employer shall be eligible for a reimbursement from
5 the department for any tuition, books, fees, and materials required
6 for that training or instruction, up to a maximum of one thousand
7 dollars. Reimbursing an employer for the costs of such training or
8 instruction does not constitute a determination by the department
9 that the worker is eligible for vocational services authorized by RCW
10 51.32.095 and 51.32.099.

11 (e) If an employer insured with the department offers a worker
12 work pursuant to this subsection (~~((4))~~) (3), and the employer
13 provides the worker with clothing that is necessary to allow the
14 worker to perform the offered work, the employer shall be eligible
15 for reimbursement for such clothing from the department, up to a
16 maximum of four hundred dollars. However, an employer shall not
17 receive reimbursement for any clothing it provided to the worker that
18 it normally provides to its workers. The clothing purchased for the
19 worker shall become the worker's property once the work comes to an
20 end.

21 (f) If an employer insured with the department offers a worker
22 work pursuant to this subsection (~~((4))~~) (3) and the worker must be
23 provided with tools or equipment to perform the offered work, the
24 employer shall be eligible for a reimbursement from the department
25 for such tools and equipment and related costs as determined by
26 department rule, up to a maximum of two thousand five hundred
27 dollars. An employer shall not be reimbursed for any tools or
28 equipment purchased prior to offering the work to the worker pursuant
29 to this subsection (~~((4))~~) (3). An employer shall not be reimbursed
30 for any tools or equipment that it normally provides to its workers.
31 The tools and equipment shall be the property of the employer.

32 (g) An employer may offer work to a worker pursuant to this
33 subsection (~~((4))~~) (3) more than once, but in no event may the
34 employer receive wage subsidies for more than sixty-six days of work
35 in a consecutive twenty-four month period under one claim. An
36 employer may continue to offer work pursuant to this subsection
37 (~~((4))~~) (3) after the worker has performed sixty-six days of work,
38 but the employer shall not be eligible to receive wage subsidies for
39 such work.

1 (h) An employer shall not receive any wage subsidies or
2 reimbursement of any expenses pursuant to this subsection (~~((4))~~) (3)
3 unless the employer has completed and submitted the reimbursement
4 request on forms developed by the department, along with all related
5 information required by department rules. No wage subsidy or
6 reimbursement shall be paid to an employer who fails to submit a form
7 for such payment within one year of the date the work was performed.
8 In no event shall an employer receive wage subsidy payments or
9 reimbursements of any expenses pursuant to this subsection (~~((4))~~)
10 (3) unless the worker's physician or licensed advanced registered
11 nurse practitioner has restricted him or her from performing his or
12 her usual work and the worker's physician or licensed advanced
13 registered nurse practitioner has released him or her to perform the
14 work offered.

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

18 (j) Once the worker returns to work under the terms of this
19 subsection (~~((4))~~) (3), he or she shall not be assigned by the
20 employer to work other than the available work described without the
21 worker's written consent, or without prior review and approval by the
22 worker's physician or licensed advanced registered nurse
23 practitioner. An employer who directs a claimant to perform work
24 other than that approved by the attending physician and without the
25 approval of the worker's physician or licensed advanced registered
26 nurse practitioner shall not receive any wage subsidy or other
27 reimbursements for such work.

28 (k) If the worker returns to work under this subsection (~~((4))~~)
29 (3), any employee health and welfare benefits that the worker was
30 receiving at the time of injury shall continue or be resumed at the
31 level provided at the time of injury. Such benefits shall not be
32 continued or resumed if to do so is inconsistent with the terms of
33 the benefit program, or with the terms of the collective bargaining
34 agreement currently in force.

35 (l) In the event of any dispute as to the validity of the work
36 offered or as to the worker's ability to perform the available work
37 offered by the employer, the department shall make the final
38 determination pursuant to an order that contains the notice required
39 by RCW 51.52.060 and that is subject to appeal subject to RCW
40 51.52.050.

1 ~~((5))~~ (4) An employer's experience rating shall not be affected
2 by the employer's request for or receipt of wage subsidies.

3 ~~((6))~~ (5) The department shall create a Washington stay-at-work
4 account which shall be funded by assessments of employers insured
5 through the state fund for the costs of the payments authorized by
6 subsection ~~((4))~~ (3) of this section and for the cost of creating a
7 reserve for anticipated liabilities. Employers may collect up to one-
8 half the fund assessment from workers.

9 ~~((7))~~ (6) No worker shall receive compensation for or during
10 the day on which injury was received or the three days following the
11 same, unless his or her disability shall continue for a period of
12 fourteen consecutive calendar days from date of injury: PROVIDED,
13 That attempts to return to work in the first fourteen days following
14 the injury shall not serve to break the continuity of the period of
15 disability if the disability continues fourteen days after the injury
16 occurs.

17 ~~((8))~~ (7) Should a worker suffer a temporary total disability
18 and should his or her employer at the time of the injury continue to
19 pay him or her the wages which he or she was earning at the time of
20 such injury, such injured worker shall not receive any payment
21 provided in subsection (1) of this section during the period his or
22 her employer shall so pay such wages: PROVIDED, That holiday pay,
23 vacation pay, sick leave, or other similar benefits shall not be
24 deemed to be payments by the employer for the purposes of this
25 subsection.

26 ~~((9))~~ (8) In no event shall the monthly payments provided in
27 this section:

28 (a) Exceed the applicable percentage of the average monthly wage
29 in the state as computed under the provisions of RCW 51.08.018 as
30 follows:

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

36 (b) For dates of injury or disease manifestation after July 1,
37 2008, be less than fifteen percent of the average monthly wage in the
38 state as computed under RCW 51.08.018 plus an additional ten dollars

1 per month if the worker is married and an additional ten dollars per
2 month for each child of the worker up to a maximum of five children.
3 However, if the monthly payment computed under this subsection
4 (~~((9))~~) (8)(b) is greater than one hundred percent of the wages of
5 the worker as determined under RCW 51.08.178, the monthly payment due
6 to the worker shall be equal to the greater of the monthly wages of
7 the worker or the minimum benefit set forth in this section on June
8 30, 2008.

9 (~~((10))~~) (9) If the supervisor of industrial insurance determines
10 that the worker is voluntarily retired and is no longer attached to
11 the workforce, benefits shall not be paid under this section.

12 (~~((11))~~) (10) The department shall adopt rules as necessary to
13 implement this section.

14 NEW SECTION. **Sec. 8.** "Board" means meals regularly provided by
15 the employer to the worker. The fair market value of the meals shall
16 be used in calculating the amount added to the worker's wage of
17 injury under RCW 51.08.178.

18 NEW SECTION. **Sec. 9.** "Bonus" means a sum of money given to an
19 employee in addition to regular pay, in appreciation, recognition or
20 reward for work done, performance, or similar reasons.

21 NEW SECTION. **Sec. 10.** "Commission" means compensation paid
22 entirely or in significant part based on sales or work completed.

23 NEW SECTION. **Sec. 11.** "Health care benefits" means coverage for
24 health insurance costs, whether purchased through an insurance
25 company or through a self-insurance program, and shall include
26 coverage for medical, dental, and vision insurance. Where the
27 insurance is provided by the worker's trade union, the amount shall
28 be based on the amount paid by the employer to the union on the
29 worker's behalf. Where the insurance is provided by the employer
30 through a self-insurance program, the amount to be used shall be the
31 amount the employer reports for purposes of the consolidated omnibus
32 budget reconciliation act (COBRA) for individuals with coverage
33 similar to the coverage provided to the worker, less the amount the
34 worker was required to pay for the worker's portion of the coverage
35 on the date of injury.

1 NEW SECTION. **Sec. 12.** "Housing" means shelter or lodging
2 provided by the employer to the worker. The value of the housing
3 shall be based on the fair market value of the housing.

4 NEW SECTION. **Sec. 13.** For purposes of determining wages under
5 RCW 51.08.178, "relevant geographic area" means an area of
6 substantially equivalent distance from the worker's residence that he
7 or she actually traveled to work at the job of injury or that which a
8 reasonable person would travel in order to work.

9 NEW SECTION. **Sec. 14.** "Utilities" means costs related to
10 housing provided by the employer. The fair market value of utilities
11 shall be used in calculating the amount added to the worker's wage of
12 injury under RCW 51.08.178.

13 NEW SECTION. **Sec. 15.** A new section is added to chapter 51.32
14 RCW to read as follows:

15 (1) To encourage employers to continue health insurance coverage
16 for their injured workers, an employer insured with the department
17 who pays the worker's portion of the health insurance premium in
18 addition to the employer portion while the worker is entitled to wage
19 loss benefits under RCW 51.32.060 or 51.32.090(1), the employer shall
20 be eligible for reimbursement of the amount the employer paid for the
21 worker's portion of the health insurance premium.

22 (2) An employer may not receive any reimbursement of the worker's
23 portion of the health insurance premium under this section unless the
24 employer has completed and submitted the reimbursement request on
25 forms developed by the department, along with all related information
26 required by department rules. No reimbursement shall be paid to an
27 employer who fails to submit a form for the reimbursement within one
28 year of the date the health insurance premium was paid.

29 (3) Reimbursements under this section shall be made out of the
30 accident fund.

31 NEW SECTION. **Sec. 16.** A new section is added to chapter 51.32
32 RCW to read as follows:

33 The department shall adopt all rules necessary to implement this
34 act.

1 NEW SECTION. **Sec. 17.** Sections 8 through 14 of this act are
2 each added to chapter 51.08 RCW.

--- **END** ---