

# SENATE BILL REPORT

## SB 5046

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As of January 21, 2021

**Title:** An act relating to workers' compensation claim resolution settlement agreements.

**Brief Description:** Concerning workers' compensation claim resolution settlement agreements.

**Sponsors:** Senators Conway, Keiser and King.

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/21/21.

**Brief Summary of Bill**

- Allows the parties to a workers' compensation claims to agree to have the claim resolution settlement be paid out in a single lump sum or be paid on a structured basis.
- Requires the Board of Industrial Insurance Appeals to provide copies of all final claim resolution settlement agreements to the Department of Labor and Industries.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Staff:** Susan Jones (786-7404)

**Background:** Workers' Compensation. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disabilities benefits. Occupational disease means a "disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title." The Department of Labor and Industries (L&I) administers the state's workers' compensation system.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Claim Settlements. Eligible workers have the option to settle parts of their workers' compensation claims through structured settlements. Settlements are available for injured workers who are age 50 and older. Medical benefits may not be settled. The parties may only initiate claim resolution structured settlements if at least 180 days have passed since the claim was received by L&I or self-insurer and the order allowing the claim is final and binding.

The claim resolution structured settlement agreements must:

- bind the parties with regard to all aspects of a claim except medical benefits unless revoked by one of the parties;
- provide a periodic payment schedule to the worker equal to at least 25 percent but not more than 150 percent of the average monthly wage in the state, except for the initial payment which may be up to six times the average monthly wage in the state;
- not set aside or reverse an allowance order;
- not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and
- not subject any funds covered under this title to any responsibility or burden without prior approval from the director or designee.

An unrepresented worker seeking to settle a claim must submit the agreement to an industrial appeals judge (IAJ) for approval. The IAJ can approve the settlement only if the settlement is in the best interest of the worker. If the IAJ approves the agreement, the agreement is forwarded to the Board of Industrial Insurance Appeals (BIIA) for approval.

A worker who is represented by an attorney can submit the settlement agreement directly to the BIIA for approval. The BIIA must approve the agreement unless it finds that the parties have not entered into the agreement knowingly and willingly; the agreement does not meet the requirements of a settlement; the agreement is the result of a material misrepresentation of law or fact; the agreement is the result of harassment or coercion; or the agreement is unreasonable as a matter of law.

Offsets. Federal and state laws address the coordination of Social Security disability benefits and workers' compensation.

**Summary of Bill:** The term "structured settlement agreement" is modified to "claim resolution settlement agreement."

At the option of the parties, a claim resolution settlement may either be paid out in a single lump sum or be paid on a structured basis. If the parties opt to have the settlement paid on a structured basis, the agreement must meet the payment schedule provisions of the law.

The BIIA must provide to L&I copies of all final claim resolution settlement agreements.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: The structured settlement issue came up years ago. Some people had concerns about lump sum payouts when we first initiated the program. There has been more than ten years of structured settlements.

The parties have been talking about the bill for some time. The issue was first brought up by workers' attorneys last spring and then brought forward to the employer attorney community. Business and labor came together with L&I to solve this problem. This is a positive change for employer and employees. It allows workers to use the program without risking losing their federal benefits.

The benefits impacted are social security benefits. It was believed that these benefits would not be impacted by structured settlements. L&I was assured by the federal government that there would be no interruption in federal benefits with the structured settlements payments. That has changed recently. The Social Security Administration changed their interpretation of the law fairly recently so that the periodic payment portion of the structure payment would be affected but the lump sum payment would not. This would frequently result in the injured workers, who are receiving social security disability benefits, losing their social security disability benefits during the period when they receive periodic payments. This gives a disincentive to entering into settlement agreements.

This bill provides a solution by allowing a worker to enter into a settlement with a lump sum payment that should not be subject to social security offset under Social Security's interpretation of the law. Social Security administration treats lump sum payments as if they are received over the life expectancy of the worker, making it a small amount that would not impact their social security disability benefits. They treat the periodic payments differently, like they are time loss payments. This may open up opportunities for more workers who wish to resolve their claims without risking their benefits through social security offset.

There needs to be an exception to the public records exemption of materials submitted to BIIA in the structured settlement process. L&I is required by law to hold copies of the final settlement agreements in claim files. Without the exemption, BIIA may not provide the agreements to L&I. With the change in the law, L&I can be confident that they have the correct, final copy of the agreement. BBIA is supportive of the changes.

**Persons Testifying:** PRO: Senator Steve Conway, Prime Sponsor; Debra Hatzialexiou, Labor & Industries; Bernadette Pratt, Washington Self-Insurers Association; Dave Threedy, Board of Industrial Insurance Appeals; David Lauman, Washington State Association for

Justice.

**Persons Signed In To Testify But Not Testifying:** No one.