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HOUSE BILL 2224

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Clements, Conway, Keiser, Stensen and Kenney

Read first time 02/22/1999. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to return-to-work benefits available prior to a  
2 determination of eligibility for vocational rehabilitation services;  
3 adding new sections to chapter 51.32 RCW; creating a new section;  
4 providing an effective date; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds that incentives for  
7 early intervention will assist employers and workers to take actions  
8 that substantially reduce the incidence of long-term disability and  
9 economic loss suffered by injured workers, and the economic loss  
10 incurred by employers through increasing workers' compensation premiums  
11 and costs.

12            NEW SECTION.    **Sec. 2.**    (1) An employer may request early  
13 intervention benefits as provided in this section to assist an injured  
14 worker to return to work in a modified or a new job with the employer  
15 of injury, or to a new job with a new employer, the costs of which the  
16 supervisor of industrial insurance or supervisor's designee, in his or  
17 her sole discretion, may pay, or direct a self-insurer to pay, if:

1 (a) The supervisor or supervisor's designee has not made a  
2 determination with regard to vocational rehabilitation services for the  
3 injured worker under RCW 51.32.095;

4 (b) The attending doctor has certified that it is more probable  
5 than not that the injured worker's disability will last twelve months  
6 or more from the date of injury;

7 (c) The injured worker's disability constitutes a substantial  
8 impairment that prevents the injured worker from performing an  
9 essential function of the job at injury;

10 (d) The department has been provided with a job analysis of the  
11 proposed job completed by a qualified vocational rehabilitation  
12 professional and approved by the attending doctor. The job analysis  
13 must meet standards determined by department rule, not to exceed the  
14 job analysis requirements of the federal Americans with disabilities  
15 act, P.L. 101-336;

16 (e) The employer providing the proposed job agrees to pay no less  
17 than ninety-five percent of the wages of the job at injury and the  
18 proposed job is available to the worker for at least twelve consecutive  
19 months; and

20 (f) If benefits are to be provided for returning an injured worker  
21 to a new job, the job at injury cannot be modified without undue  
22 hardship to the employer of injury.

23 (2) Except as provided in subsection (3) of this section, for a  
24 claim, the total combined costs of early intervention benefits and  
25 benefits under RCW 51.32.250 may not exceed five thousand dollars,  
26 subject to the following limits:

27 (a) Costs under this section may be authorized for: (i) The costs  
28 of job modification, including workstation improvements and personal  
29 accommodation devices; (ii) skill enhancement costs, limited to  
30 tuition, books, and fees, to provide the injured worker with skills to  
31 meet the requirements of the new job; and (iii) a wage subsidy for the  
32 employer of up to thirty percent of the injured worker's wages for a  
33 modified job at injury or a new job.

34 (b) Costs under this section may not exceed two thousand five  
35 hundred dollars for any one or a combination of the following:

36 (i) Specialized professional job modification consultation services  
37 to assist with workstation improvements and the selection of personal  
38 accommodation devices;

39 (ii) Skill enhancement costs; and

1 (iii) Wage subsidy.

2 (3) An employer may request an exceptional early intervention  
3 benefit as provided in this subsection, the costs of which the  
4 supervisor or supervisor's designee, in his or her sole discretion, may  
5 pay, or direct a self-insurer to pay, up to ten thousand dollars for a  
6 claim if the supervisor or designee determines that more probably than  
7 not:

8 (a) The exceptional benefit will enable the injured worker to  
9 return to work; and

10 (b) The injured worker has significant permanent restrictions and  
11 marked objective medical findings directly related to the industrial  
12 injury which establish that the benefits authorized under subsection  
13 (2) of this section will not result in the injured worker's return to  
14 work without undue hardship to the employer.

15 (4) A supervisor's or designee's determination under this section  
16 may not be used or received in evidence, obtained in discovery, or  
17 otherwise disclosed in a civil or administrative proceeding, other than  
18 a proceeding under this title.

19 (5) If the payment of a wage subsidy pursuant to a schedule  
20 authorized under this section is not completed before claim closure,  
21 the subsidy may continue to be paid after the claim is closed,  
22 consistent with the authorized schedule.

23 (6) The costs of job modifications, including workstation  
24 improvements and personal accommodation devices, and the costs of  
25 consultation services shall be charged to the employer's medical aid  
26 fund cost experience or shall be paid by the self-insurer, as the case  
27 may be. The costs of skill enhancement benefits and wage subsidies  
28 shall be charged to the employer's accident fund cost experience or  
29 shall be paid by the self-insurer, as the case may be. A self-insurer  
30 that has paid benefits authorized under this section may be reimbursed  
31 from the second injury fund.

32 (7)(a) If an employer fails to retain an injured worker who  
33 received benefits under this section for at least fifty-two weeks in  
34 the new or modified job at ninety-five percent or more of the wages of  
35 the job at injury, the employer must repay the benefits paid under this  
36 section, unless the failure to retain the worker was for reasons not  
37 attributable to the employer. The employer may contest a department  
38 order assessing the repayment in the same manner and to the same extent  
39 as provided in RCW 51.52.050 and 51.52.060.

1 (b)(i) If a department's order of repayment under this subsection  
2 becomes final under chapter 51.52 RCW, the director or director's  
3 designee may file with the clerk in any county within the state a  
4 warrant in the amount representing the sum to be repaid plus interest  
5 accruing from the date the order became final. The clerk of the court  
6 shall be entitled to a filing fee of five dollars, which shall be added  
7 to the amount of the warrant. A copy of the warrant shall be mailed to  
8 the employer within three days of filing with the clerk.

9 (ii) The clerk of the county in which the warrant is filed shall  
10 immediately designate a superior court cause number for the warrant and  
11 the clerk shall cause to be entered in the judgment docket under the  
12 superior court cause number assigned to the warrant, the name of the  
13 employer named in the warrant, the amount of the repayment plus  
14 interest accrued, and the date the warrant was filed. The amount of  
15 the warrant as docketed shall become a lien upon the title to and  
16 interest in all real and personal property of the employer against whom  
17 the warrant is issued, the same as a judgment in a civil case docketed  
18 in the office of such clerk. The sheriff shall then proceed in the  
19 same manner and with like effect as prescribed by law with respect to  
20 execution or other process issued against rights or property upon  
21 judgment in the superior court.

22 (iii) A warrant docketed under this subsection shall be sufficient  
23 to support:

24 (A) The issuance of writs of garnishment in favor of the department  
25 in the manner provided by law in the case of judgment, wholly or  
26 partially unsatisfied; and

27 (B) Any action by the department authorized under this title for  
28 the collection of payments due to the state fund.

29 (8) The benefits authorized under this section do not affect:

30 (a) The vocational rehabilitation and job modification benefits  
31 authorized under RCW 51.32.095 and 51.32.250, except as provided in  
32 this section; or

33 (b) The benefits authorized under RCW 51.32.090(3), except that an  
34 injured worker may not receive a wage subsidy benefit under this  
35 section and benefits under RCW 51.32.090(3) for the same period.

36 (9) To assist in verifying employer compliance with this section,  
37 the department shall enter into an interagency agreement with the  
38 employment security department regarding access to employer wage  
39 reports.

1 (10) The benefits provided in this section are available to any  
2 otherwise eligible worker who is injured or contracts an occupational  
3 disease on or after July 1, 1999, and before July 1, 2002.

4 (11) As used in this section, "undue hardship" means a job  
5 modification requiring significant difficulty or expense, when  
6 considered in light of the following factors: (a) The nature and cost  
7 of the modification needed; (b) the overall financial resources of the  
8 facility or facilities involved in providing the modification, the  
9 number of persons employed at the facility, the effect on expenses and  
10 resources or the impact otherwise of the modification on the operation  
11 of the facility; (c) the overall financial resources of the employer,  
12 the overall size of the employer with respect to the number of  
13 employees, and the number, type, and location of the employer's  
14 facilities; and (d) the type of operation or operations of the  
15 employer, including the composition, structure, and functions of the  
16 work force of the employer; the geographic separateness,  
17 administrative, or fiscal relationship of the facility or facilities to  
18 the employer.

19 NEW SECTION. **Sec. 3.** Within forty-eight hours after an  
20 application for temporary total disability compensation has been  
21 received by the department, the department shall notify the employer,  
22 claimant, and attending doctor in writing of the availability of early  
23 intervention benefits under section 2 of this act. After payment of  
24 fourteen consecutive days, and before payment of twenty-one consecutive  
25 days, of temporary total disability compensation to a state fund  
26 claimant, the department shall contact the employer or the employer's  
27 representative and discuss the use of early intervention benefits to  
28 achieve an early return to work for the claimant.

29 NEW SECTION. **Sec. 4.** Beginning December 1, 2000, the department  
30 shall report annually to the workers' compensation advisory committee  
31 and the appropriate committees of the legislature on a cost-benefit  
32 analysis of the utilization of benefits under section 2 of this act and  
33 the effect of the utilization on return-to-work outcomes, long-term  
34 wage replacement impacts, and cost experience for employers.

35 NEW SECTION. **Sec. 5.** If any provision of this act or its  
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 6.** Sections 2 through 4 of this act are each  
4 added to chapter 51.32 RCW.

5 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 July 1, 1999.

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