

ESHB 2002 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

NOT CONSIDERED 05/25/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
4 each reenacted and amended to read as follows:

5 (1) When the total disability is only temporary, the schedule of
6 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
7 the total disability continues.

8 (2) Any compensation payable under this section for children not in
9 the custody of the injured worker as of the date of injury shall be
10 payable only to such person as actually is providing the support for
11 such child or children pursuant to the order of a court of record
12 providing for support of such child or children.

13 (3)(a) As soon as recovery is so complete that the present earning
14 power of the worker, at any kind of work, is restored to that existing
15 at the time of the occurrence of the injury, the payments shall cease.
16 If and so long as the present earning power is only partially restored,
17 the payments shall:

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

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

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

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

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

12 (b) Whenever the employer of injury requests that a worker who is
13 entitled to temporary total disability under this chapter be certified
14 by a physician or licensed advanced registered nurse practitioner as
15 able to perform available work other than his or her usual work, the
16 employer shall furnish to the physician or licensed advanced registered
17 nurse practitioner, with a copy to the worker, a statement describing
18 the work available with the employer of injury in terms that will
19 enable the physician or licensed advanced registered nurse practitioner
20 to relate the physical activities of the job to the worker's
21 disability. The physician or licensed advanced registered nurse
22 practitioner shall then determine whether the worker is physically able
23 to perform the work described. The worker's temporary total disability
24 payments shall continue until the worker is released by his or her
25 physician or licensed advanced registered nurse practitioner for the
26 work, and begins the work with the employer of injury. If the work
27 thereafter comes to an end before the worker's recovery is sufficient
28 in the judgment of his or her physician or licensed advanced registered
29 nurse practitioner to permit him or her to return to his or her usual
30 job, or to perform other available work offered by the employer of
31 injury, the worker's temporary total disability payments shall be
32 resumed. Should the available work described, once undertaken by the
33 worker, impede his or her recovery to the extent that in the judgment
34 of his or her physician or licensed advanced registered nurse
35 practitioner he or she should not continue to work, the worker's
36 temporary total disability payments shall be resumed when the worker
37 ceases such work.

1 ~~((b))~~ (c) To further encourage employers to maintain the
2 employment of their injured workers, an employer insured with the
3 department and that offers work to a worker pursuant to this subsection
4 (4) shall be eligible for reimbursement of the injured worker's wages
5 for light duty or transitional work equal to fifty percent of the
6 basic, gross wages paid for that work, for a maximum of sixty-six work
7 days within a consecutive twenty-four month period. In no event may
8 the wage subsidies paid to an employer on a claim exceed ten thousand
9 dollars. Wage subsidies shall be calculated using the worker's basic
10 hourly wages or basic salary, and no subsidy shall be paid for any
11 other form of compensation or payment to the worker such as tips,
12 commissions, bonuses, board, housing, fuel, health care, dental care,
13 vision care, per diem, reimbursements for work-related expenses, or any
14 other payments. An employer may not, under any circumstances, receive
15 a wage subsidy for a day in which the worker did not actually perform
16 any work, regardless of whether or not the employer paid the worker
17 wages for that day.

18 (d) If an employer insured with the department offers a worker work
19 pursuant to this subsection (4) and the worker must be provided with
20 training or instruction to be qualified to perform the offered work,
21 the employer shall be eligible for a reimbursement from the department
22 for any tuition, books, fees, and materials required for that training
23 or instruction, up to a maximum of one thousand dollars. Reimbursing
24 an employer for the costs of such training or instruction does not
25 constitute a determination by the department that the worker is
26 eligible for vocational services authorized by RCW 51.32.095 and
27 51.32.099.

28 (e) If an employer insured with the department offers a worker work
29 pursuant to this subsection (4), and the employer provides the worker
30 with clothing that is necessary to allow the worker to perform the
31 offered work, the employer shall be eligible for reimbursement for such
32 clothing from the department, up to a maximum of four hundred dollars:
33 PROVIDED, HOWEVER, That an employer shall not receive reimbursement for
34 any clothing it provided to the worker that it normally provides to its
35 workers. The clothing purchased for the worker shall become the
36 worker's property once the work comes to an end.

37 (f) If an employer insured with the department offers a worker work
38 pursuant to this subsection (4) and the worker must be provided with

1 tools or equipment to perform the offered work, the employer shall be
2 eligible for a reimbursement from the department for such tools and
3 equipment and related costs as determined by department rule, up to a
4 maximum of two thousand five hundred dollars. An employer shall not be
5 reimbursed for any tools or equipment purchased prior to offering the
6 work to the worker pursuant to this subsection (4). An employer shall
7 not be reimbursed for any tools or equipment that it normally provides
8 to its workers. The tools and equipment shall be the property of the
9 employer.

10 (g) An employer may offer work to a worker pursuant to this
11 subsection (4) more than once, but in no event may the employer receive
12 wage subsidies for more than sixty-six days of work in a consecutive
13 twenty-four month period under one claim. An employer may continue to
14 offer work pursuant to this subsection (4) after the worker has
15 performed sixty-six days of work, but the employer shall not be
16 eligible to receive wage subsidies for such work.

17 (h) An employer shall not receive any wage subsidies or
18 reimbursement of any expenses pursuant to this subsection (4) unless
19 the employer has completed and submitted the reimbursement request on
20 forms developed by the department, along with all related information
21 required by department rules. No wage subsidy or reimbursement shall
22 be paid to an employer who fails to submit a form for such payment
23 within one year of the date the work was performed. In no event shall
24 an employer receive wage subsidy payments or reimbursements of any
25 expenses pursuant to this subsection (4) unless the worker's physician
26 or licensed advanced registered nurse practitioner has restricted him
27 or her from performing his or her usual work and the worker's physician
28 or licensed advanced registered nurse practitioner has released him or
29 her to perform the work offered.

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

33 (j) Once the worker returns to work under the terms of this
34 subsection (4), he or she shall not be assigned by the employer to work
35 other than the available work described without the (~~worker's written~~
36 consent, or without prior review and)) approval ((~~by~~)) of the worker's
37 physician or licensed advanced registered nurse practitioner. An
38 employer who directs a claimant to perform work other than that

1 approved by the attending physician and without the approval of the
2 worker's physician or licensed advanced registered nurse practitioner
3 shall not receive any wage subsidy or other reimbursements for such
4 work.

5 ((+e)) (k) If the worker returns to work under this subsection
6 (4), any employee health and welfare benefits that the worker was
7 receiving at the time of injury shall continue or be resumed at the
8 level provided at the time of injury. Such benefits shall not be
9 continued or resumed if to do so is inconsistent with the terms of the
10 benefit program, or with the terms of the collective bargaining
11 agreement currently in force.

12 ((+d)) (l) In the event of any dispute as to the validity of the
13 work offered or as to the worker's ability to perform the available
14 work offered by the employer, the department shall make the final
15 determination pursuant to an order that contains the notice required by
16 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

17 (5) An employer's experience rating shall not be affected by the
18 employer's request for or receipt of wage subsidies.

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

25 (7) No worker shall receive compensation for or during the day on
26 which injury was received or the three days following the same, unless
27 his or her disability shall continue for a period of fourteen
28 consecutive calendar days from date of injury: PROVIDED, That attempts
29 to return to work in the first fourteen days following the injury shall
30 not serve to break the continuity of the period of disability if the
31 disability continues fourteen days after the injury occurs.

32 ((+6)) (8) Should a worker suffer a temporary total disability and
33 should his or her employer at the time of the injury continue to pay
34 him or her the wages which he or she was earning at the time of such
35 injury, such injured worker shall not receive any payment provided in
36 subsection (1) of this section during the period his or her employer
37 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,

1 sick leave, or other similar benefits shall not be deemed to be
2 payments by the employer for the purposes of this subsection.

3 ~~((+7))~~ (9) In no event shall the monthly payments provided in this
4 section:

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

| | AFTER | PERCENTAGE |
|--|-------|------------|
|--|-------|------------|

| | | |
|---|---------------|------|
| 7 | June 30, 1993 | 105% |
|---|---------------|------|

| | | |
|---|---------------|------|
| 8 | June 30, 1994 | 110% |
|---|---------------|------|

| | | |
|---|---------------|------|
| 9 | June 30, 1995 | 115% |
|---|---------------|------|

| | | |
|----|---------------|------|
| 10 | June 30, 1996 | 120% |
|----|---------------|------|

11
12 (b) For dates of injury or disease manifestation after July 1,
13 2008, be less than fifteen percent of the average monthly wage in the
14 state as computed under RCW 51.08.018 plus an additional ten dollars
15 per month if the worker is married and an additional ten dollars per
16 month for each child of the worker up to a maximum of five children.
17 However, if the monthly payment computed under this subsection ~~((+7))~~
18 (9)(b) is greater than one hundred percent of the wages of the worker
19 as determined under RCW 51.08.178, the monthly payment due to the
20 worker shall be equal to the greater of the monthly wages of the worker
21 or the minimum benefit set forth in this section on June 30, 2008.

22 ~~((+8))~~ (10) If the supervisor of industrial insurance determines
23 that the worker is voluntarily retired and is no longer attached to the
24 workforce, benefits shall not be paid under this section.

25 NEW SECTION. **Sec. 2.** Section 1 of this act expires July 1, 2016.

26 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and takes effect
29 July 1, 2011."

NOT CONSIDERED 05/25/2011

1 On page 1, line 2 of the title, after "work;" strike the remainder
2 of the title and insert "reenacting and amending RCW 51.32.090;
3 providing an effective date; providing an expiration date; and
4 declaring an emergency."

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