
SENATE BILL 5362

State of Washington

63rd Legislature

2013 Regular Session

By Senators Conway, Holmquist Newbry, Keiser, and Kohl-Welles; by request of Department of Labor & Industries

Read first time 01/28/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to recommendations of the vocational rehabilitation
2 subcommittee for workers' compensation; amending RCW 51.32.095 and
3 51.32.099; amending 2011 c 291 s 3 (uncodified); amending 2009 c 353 s
4 7 (uncodified); amending 2007 c 72 s 6 (uncodified); and providing
5 expiration dates.

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

7 **Sec. 1.** RCW 51.32.095 and 2011 c 291 s 1 are each amended to read
8 as follows:

9 (1) One of the primary purposes of this title is to enable the
10 injured worker to become employable at gainful employment. To this
11 end, the department or self-insurers shall utilize the services of
12 individuals and organizations, public or private, whose experience,
13 training, and interests in vocational rehabilitation and retraining
14 qualify them to lend expert assistance to the supervisor of industrial
15 insurance in such programs of vocational rehabilitation as may be
16 reasonable to make the worker employable consistent with his or her
17 physical and mental status. Where, after evaluation and recommendation
18 by such individuals or organizations and prior to final evaluation of
19 the worker's permanent disability and in the sole opinion of the

1 supervisor or supervisor's designee, whether or not medical treatment
2 has been concluded, vocational rehabilitation is both necessary and
3 likely to enable the injured worker to become employable at gainful
4 employment, the supervisor or supervisor's designee may, in his or her
5 sole discretion, pay or, if the employer is a self-insurer, direct the
6 self-insurer to pay the cost as provided in subsection (4) of this
7 section or RCW 51.32.099, as appropriate. An injured worker may not
8 participate in vocational rehabilitation under this section or RCW
9 51.32.099 if such participation would result in a payment of benefits
10 as described in RCW 51.32.240(5), and any benefits so paid shall be
11 recovered according to the terms of that section.

12 (2) When in the sole discretion of the supervisor or the
13 supervisor's designee vocational rehabilitation is both necessary and
14 likely to make the worker employable at gainful employment, then the
15 following order of priorities shall be used:

16 (a) Return to the previous job with the same employer;

17 (b) Modification of the previous job with the same employer
18 including transitional return to work;

19 (c) A new job with the same employer in keeping with any
20 limitations or restrictions;

21 (d) Modification of a new job with the same employer including
22 transitional return to work;

23 (e) Modification of the previous job with a new employer;

24 (f) A new job with a new employer or self-employment based upon
25 transferable skills;

26 (g) Modification of a new job with a new employer;

27 (h) A new job with a new employer or self-employment involving on-
28 the-job training;

29 (i) Short-term retraining and job placement.

30 (3) Notwithstanding subsection (2) of this section, vocational
31 services may be provided to an injured worker who has suffered the loss
32 or complete use of both legs, or arms, or one leg and one arm, or total
33 eyesight when, in the sole discretion of the supervisor or the
34 supervisor's designee, these services will either substantially improve
35 the worker's quality of life or substantially improve the worker's
36 ability to function in an employment setting, regardless of whether or
37 not these services are either necessary or reasonably likely to make
38 the worker employable at any gainful employment. Vocational services

1 must be completed prior to the commencement of the worker's entitlement
2 to benefits under RCW 51.32.060. However, workers who are eligible for
3 vocational services under this subsection are not eligible for option
4 2 benefits, as provided in RCW 51.32.099(4).

5 (4)(a) For vocational plans approved prior to July 1, 1999, costs
6 for vocational rehabilitation benefits allowed by the supervisor or
7 supervisor's designee under subsection (1) of this section may include
8 the cost of books, tuition, fees, supplies, equipment, transportation,
9 child or dependent care, and other necessary expenses for any such
10 worker in an amount not to exceed three thousand dollars in any fifty-
11 two week period, and the cost of continuing the temporary total
12 disability compensation under RCW 51.32.090 while the worker is
13 actively and successfully undergoing a formal program of vocational
14 rehabilitation.

15 (b) When the department has approved a vocational plan for a worker
16 between July 1, 1999, through December 31, 2007, costs for vocational
17 rehabilitation benefits allowed by the supervisor or supervisor's
18 designee under subsection (1) of this section may include the cost of
19 books, tuition, fees, supplies, equipment, child or dependent care, and
20 other necessary expenses for any such worker in an amount not to exceed
21 four thousand dollars in any fifty-two week period, and the cost of
22 transportation and continuing the temporary total disability
23 compensation under RCW 51.32.090 while the worker is actively and
24 successfully undergoing a formal program of vocational rehabilitation.

25 (c) The expenses allowed under (a) or (b) of this subsection may
26 include training fees for on-the-job training and the cost of
27 furnishing tools and other equipment necessary for self-employment or
28 reemployment. However, compensation or payment of retraining with job
29 placement expenses under (a) or (b) of this subsection may not be
30 authorized for a period of more than fifty-two weeks, except that such
31 period may, in the sole discretion of the supervisor after his or her
32 review, be extended for an additional fifty-two weeks or portion
33 thereof by written order of the supervisor.

34 (d) In cases where the worker is required to reside away from his
35 or her customary residence, the reasonable cost of board and lodging
36 shall also be paid.

37 (e) Costs paid under this subsection shall be chargeable to the

1 employer's cost experience or shall be paid by the self-insurer as the
2 case may be.

3 (5) In addition to the vocational rehabilitation expenditures
4 provided for under subsection (4) of this section and RCW 51.32.099, an
5 additional five thousand dollars may, upon authorization of the
6 supervisor or the supervisor's designee, be expended for: (a)
7 Accommodations for an injured worker that are medically necessary for
8 the worker to participate in an approved retraining plan; and (b)
9 accommodations necessary to perform the essential functions of an
10 occupation in which an injured worker is seeking employment, consistent
11 with the retraining plan or the recommendations of a vocational
12 evaluation. The injured worker's attending physician or licensed
13 advanced registered nurse practitioner must verify the necessity of the
14 modifications or accommodations. The total expenditures authorized in
15 this subsection and the expenditures authorized under RCW 51.32.250
16 shall not exceed five thousand dollars.

17 (6) When the department has approved a vocational plan for a worker
18 prior to January 1, 2008, regardless of whether the worker has begun
19 participating in the approved plan, costs for vocational rehabilitation
20 benefits allowed by the supervisor or supervisor's designee under
21 subsection (1) of this section are limited to those provided under
22 subsections (4) and (5) of this section.

23 For vocational plans approved for a worker between January 1, 2008,
24 through June 30, (~~(2013)~~) 2016, total vocational costs allowed by the
25 supervisor or supervisor's designee under subsection (1) of this
26 section shall be limited to those provided under the pilot program
27 established in RCW 51.32.099, and vocational rehabilitation services
28 shall conform to the requirements in RCW 51.32.099.

29 (7) The department shall establish criteria to monitor the quality
30 and effectiveness of rehabilitation services provided by the
31 individuals and organizations used under subsection (1) of this section
32 and under RCW 51.32.099. The state fund shall make referrals for
33 vocational rehabilitation services based on these performance criteria.

34 (8) The department shall engage in, where feasible and cost-
35 effective, a cooperative program with the state employment security
36 department to provide job placement services under this section and RCW
37 51.32.099.

1 (9) The benefits in this section and RCW 51.32.099 shall be
2 provided for the injured workers of self-insured employers. Self-
3 insurers shall report both benefits provided and benefits denied under
4 this section and RCW 51.32.099 in the manner prescribed by the
5 department by rule adopted under chapter 34.05 RCW. The director may,
6 in his or her sole discretion and upon his or her own initiative or at
7 any time that a dispute arises under this section or RCW 51.32.099,
8 promptly make such inquiries as circumstances require and take such
9 other action as he or she considers will properly determine the matter
10 and protect the rights of the parties.

11 (10) Except as otherwise provided in this section or RCW 51.32.099,
12 the benefits provided for in this section and RCW 51.32.099 are
13 available to any otherwise eligible worker regardless of the date of
14 industrial injury. However, claims shall not be reopened solely for
15 vocational rehabilitation purposes.

16 **Sec. 2.** RCW 51.32.099 and 2011 c 291 s 2 are each amended to read
17 as follows:

18 (1)(a) The legislature intends to create improved vocational
19 outcomes for Washington state injured workers and employers through
20 legislative and regulatory change under a pilot program for the period
21 of January 1, 2008, through June 30, ~~((2013))~~ 2016. This pilot
22 vocational system is intended to allow opportunities for eligible
23 workers to participate in meaningful retraining in high-demand
24 occupations, improve successful return to work and achieve positive
25 outcomes for workers, reduce the incidence of repeat vocational
26 services, increase accountability and responsibility, and improve cost
27 predictability. To facilitate the study and evaluation of the results
28 of the proposed changes, the department shall establish the temporary
29 funding of certain state fund vocational costs through the medical aid
30 account to ensure the appropriate assessments to employers for the
31 costs of their claims for vocational services in accordance with RCW
32 51.32.0991.

33 ~~(b) ((An independent review and study of the effects of the pilot
34 program shall be conducted to determine whether it has achieved the
35 appropriate outcomes at reasonable cost to the system. The review
36 shall include, at a minimum, a report on the department's performance
37 with regard to the provision of vocational services, the skills~~

1 ~~acquired by workers who receive retraining services, the types of~~
2 ~~training programs approved, whether the workers are employed, at what~~
3 ~~jobs and wages after completion of the training program and at various~~
4 ~~times subsequent to their claim closure, the number and demographics of~~
5 ~~workers who choose the option provided in subsection (4)(b) of this~~
6 ~~section, and their employment and earnings status at various times~~
7 ~~subsequent to claim closure. The department may adopt rules, in~~
8 ~~collaboration with the subcommittee created under (c)(iii) of this~~
9 ~~subsection, to further define the scope and elements of the required~~
10 ~~study. Reports of the independent researcher are due on December 1,~~
11 ~~2010, December 1, 2011, and December 1, 2012.~~

12 (e)) In implementing the pilot program, the department shall:

13 (i) Establish a vocational initiative project that includes
14 participation by the department as a partner with WorkSource, the
15 established state system that administers the federal workforce
16 investment act of 1998. As a partner, the department shall place
17 vocational professional full-time employees at pilot WorkSource
18 locations; refer some workers for vocational services to these
19 vocational professionals; and work with employers in work source pilot
20 areas to market the benefits of on-the-job training programs and with
21 community colleges to reserve slots in high employer demand programs of
22 study as defined in RCW 28B.50.030. These on-the-job training programs
23 and community college slots may be considered by both department and
24 private sector vocational professionals for vocational plan
25 development. The department will also assist stakeholders in
26 developing additional vocational training programs in various
27 industries, including but not limited to agriculture and construction.
28 These programs will expand the choices available to injured workers in
29 developing their vocational training plans with the assistance of
30 vocational professionals.

31 (ii) Develop and maintain a register of state fund and self-insured
32 workers who have been retrained or have selected any of the vocational
33 options described in this section for at least the duration of the
34 pilot program.

35 (iii) Create a vocational rehabilitation subcommittee made up of
36 members appointed by the director for at least the duration of the
37 pilot program. This subcommittee shall provide the business and labor
38 partnership needed to maintain focus on the intent of the pilot

1 program, as described in this section, and provide consistency and
2 transparency to the development of rules and policies. The
3 subcommittee shall report to the director at least annually and
4 recommend to the director and the legislature any additional statutory
5 changes needed, which may include extension of the pilot period. The
6 subcommittee shall provide input and oversight with the department
7 concerning the study required under (b) of this subsection. The
8 subcommittee shall provide recommendations for additional changes or
9 incentives for injured workers to return to work with their employer of
10 injury.

11 (iv) In collaboration with the subcommittee, the department shall
12 develop an annual report concerning Washington's workers' compensation
13 vocational rehabilitation system to the legislature (~~((and to the~~
14 ~~subcommittee by December 1, 2009, and annually thereafter))~~) with the
15 final report due by December 1, ~~((2012))~~ 2015. ~~((The annual report~~
16 ~~shall include the number of workers who have participated in more than~~
17 ~~one vocational training plan beginning with plans approved on January~~
18 ~~1, 2008, and in which industries those workers were employed.))~~ The
19 final report shall include ~~((the department's))~~ an assessment and
20 recommendations for further legislative action(~~(, in collaboration with~~
21 ~~the subcommittee))~~).

22 (2)(a) For the purposes of this section, the day the worker
23 commences vocational plan development means the date the department or
24 self-insurer notifies the worker of his or her eligibility for plan
25 development services or of an eligibility determination in response to
26 a dispute of a vocational decision.

27 (b) When the supervisor or supervisor's designee has decided that
28 vocational rehabilitation is both necessary and likely to make the
29 worker employable at gainful employment, he or she shall be provided
30 with services necessary to develop a vocational plan that, if
31 completed, would render the worker employable. The vocational
32 professional assigned to the claim shall, at the initial meeting with
33 the worker, fully inform the worker of the return-to-work priorities
34 set forth in RCW 51.32.095(2) and of his or her rights and
35 responsibilities under the workers' compensation vocational system.
36 The department shall provide tools to the vocational professional for
37 communicating this and other information required by RCW 51.32.095 and
38 this section to the worker.

1 (c) On the date the worker commences vocational plan development,
2 the department shall also inform the employer in writing of the
3 employer's right to make a valid return-to-work offer during the first
4 fifteen days following the commencement of vocational plan development.
5 However, at the sole discretion of the supervisor or the supervisor's
6 designee, an employer may be granted an extension of time of up to ten
7 additional days to make a valid return-to-work offer. The additional
8 days may be allowed by the department with or without a request from
9 the employer. The extension may only be granted if the employer made
10 a return-to-work offer to the worker within fifteen days of the date
11 the worker commenced vocational plan development that met some but not
12 all of the requirements in this section. To be valid, the offer must
13 be for bona fide employment with the employer of injury, consistent
14 with the worker's documented physical and mental restrictions as
15 provided by the worker's health care provider. When the employer makes
16 a valid return-to-work offer, the vocational plan development services
17 and temporary total disability compensation shall be terminated
18 effective on the starting date for the job without regard to whether
19 the worker accepts the return-to-work offer.

20 (d) Following the time period described in (c) of this subsection,
21 the employer may still provide, and the worker may accept, any valid
22 return-to-work offer. The worker's acceptance of such an offer shall
23 result in the termination of vocational plan development or
24 implementation services and temporary total disability compensation
25 effective the day the employment begins.

26 (3)(a) All vocational plans must contain an accountability
27 agreement signed by the worker detailing expectations regarding
28 progress, attendance, and other factors influencing successful
29 participation in the plan. Failure to abide by the agreed expectations
30 shall result in suspension of vocational benefits pursuant to RCW
31 51.32.110.

32 (b) Any formal education included as part of the vocational plan
33 must be for an accredited or licensed program or other program approved
34 by the department. The department shall develop rules that provide
35 criteria for the approval of nonaccredited or unlicensed programs.

36 (c) The vocational plan for an individual worker must be completed
37 and submitted to the department within ninety days of the day the
38 worker commences vocational plan development. The department may

1 extend the ninety days for good cause. Criteria for good cause shall
2 be provided in rule. The frequency and reasons for good cause
3 extensions shall be reported to the subcommittee created under
4 subsection (1)((+e)) (b)(iii) of this section.

5 (d) Costs for the vocational plan may include books, tuition, fees,
6 supplies, equipment, child or dependent care, training fees for on-the-
7 job training, the cost of furnishing tools and other equipment
8 necessary for self-employment or reemployment, and other necessary
9 expenses in an amount not to exceed twelve thousand dollars. This
10 amount shall be adjusted effective July 1 of each year for vocational
11 plans or retraining benefits available under subsection (4)(b) of this
12 section approved on or after this date but before June 30 of the next
13 year based on the average percentage change in tuition for the next
14 fall quarter for all Washington state community colleges.

15 (e) The duration of the vocational plan shall not exceed two years
16 from the date the plan is implemented. The worker shall receive
17 temporary total disability compensation under RCW 51.32.090 and the
18 cost of transportation while he or she is actively and successfully
19 participating in a vocational plan.

20 (f) If the worker is required to reside away from his or her
21 customary residence, the reasonable cost of board and lodging shall
22 also be paid.

23 (4) Vocational plan development services shall be completed within
24 ninety days of commencing. Except as provided in RCW 51.32.095(3),
25 during vocational plan development the worker shall, with the
26 assistance of a vocational professional, participate in vocational
27 counseling and occupational exploration to include, but not be limited
28 to, identifying possible job goals, training needs, resources, and
29 expenses, consistent with the worker's physical and mental status. A
30 vocational rehabilitation plan shall be developed by the worker and the
31 vocational professional and submitted to the department or
32 self-insurer. Following this submission, the worker shall elect one of
33 the following options:

34 (a) Option 1: The department or self-insurer implements and the
35 worker participates in the vocational plan developed by the vocational
36 professional and approved by the worker and the department or
37 self-insurer. For state fund claims, the department must review and
38 approve the vocational plan before implementation may begin. If the

1 department takes no action within fifteen days, the plan is deemed
2 approved. The worker may, within fifteen days of the department's
3 approval of the plan or of a determination that the plan is valid
4 following a dispute, elect option 2. However, in the sole discretion
5 of the supervisor or supervisor's designee, the department may approve
6 an election for option 2 benefits that was submitted in writing within
7 twenty-five days of the department's approval of the plan or of a
8 determination that the plan is valid following a dispute if the worker
9 provides a written explanation establishing that he or she was unable
10 to submit his or her election of option 2 benefits within fifteen days.
11 In no circumstance may the department approve of an election for option
12 2 benefits that was submitted more than twenty-five days after the
13 department's approval of a retraining plan or of a determination that
14 a plan is valid following a dispute.

15 (i) Following successful completion of the vocational plan, any
16 subsequent assessment of whether vocational rehabilitation is both
17 necessary and likely to enable the injured worker to become employable
18 at gainful employment under RCW 51.32.095(1) shall include
19 consideration of transferable skills obtained in the vocational plan.

20 (ii) If a vocational plan is successfully completed on a claim
21 which is thereafter reopened as provided in RCW 51.32.160, the cost and
22 duration available for any subsequent vocational plan is limited to
23 that in subsection (3)(d) and (e) of this section, less that previously
24 expended.

25 (b) Option 2: The worker declines further vocational services
26 under the claim and receives an amount equal to six months of temporary
27 total disability compensation under RCW 51.32.090. The award is
28 payable in biweekly payments in accordance with the schedule of
29 temporary total disability payments, until such award is paid in full.
30 These payments shall not include interest on the unpaid balance.
31 However, upon application by the worker, and at the discretion of the
32 department, the compensation may be converted to a lump sum payment.
33 The vocational costs defined in subsection (3)(d) of this section shall
34 remain available to the worker, upon application to the department or
35 self-insurer, for a period of five years. The vocational costs shall,
36 if expended, be available for programs or courses at any accredited or
37 licensed institution or program from a list of those approved by the
38 department for tuition, books, fees, supplies, equipment, and tools,

1 without department or self-insurer oversight. The department shall
2 issue an order as provided in RCW 51.52.050 confirming the option 2
3 election, setting a payment schedule, and terminating temporary total
4 disability benefits effective the date of the order confirming that
5 election. The department shall thereafter close the claim. A worker
6 who elects option 2 benefits shall not be entitled to further temporary
7 total, or to permanent total, disability benefits except upon a showing
8 of a worsening in the condition or conditions accepted under the claim
9 such that claim closure is not appropriate, in which case the option 2
10 selection will be rescinded and the amount paid to the worker will be
11 assessed as an overpayment. A claim that was closed based on the
12 worker's election of option 2 benefits may be reopened as provided in
13 RCW 51.32.160, but cannot be reopened for the sole purpose of allowing
14 the worker to seek vocational assistance.

15 (i) If within five years from the date the option 2 order becomes
16 final, the worker is subsequently injured or suffers an occupational
17 disease or reopens the claim as provided in RCW 51.32.160, and
18 vocational rehabilitation is found both necessary and likely to enable
19 the injured worker to become employable at gainful employment under RCW
20 51.32.095(1), the duration of any vocational plan under subsection
21 (3)(e) of this section shall not exceed eighteen months.

22 (ii) If the available vocational costs are utilized by the worker,
23 any subsequent assessment of whether vocational rehabilitation is both
24 necessary and likely to enable the injured worker to become employable
25 at gainful employment under RCW 51.32.095(1) shall include
26 consideration of the transferable skills obtained.

27 (iii) If the available vocational costs are utilized by the worker
28 and the claim is thereafter reopened as provided in RCW 51.32.160, the
29 cost available for any vocational plan is limited to that in subsection
30 (3)(d) of this section less that previously expended.

31 (iv) Option 2 may only be elected once per worker.

32 (c) The director, in his or her sole discretion, may provide the
33 worker vocational assistance not to exceed that in subsection (3) of
34 this section, without regard to the worker's prior option selection or
35 benefits expended, where vocational assistance would prevent permanent
36 total disability under RCW 51.32.060.

37 (5)(a) As used in this section, "vocational plan interruption"
38 means an occurrence which disrupts the plan to the extent the

1 employability goal is no longer attainable. "Vocational plan
2 interruption" does not include institutionally scheduled breaks in
3 educational programs, occasional absence due to illness, or
4 modifications to the plan which will allow it to be completed within
5 the cost and time provisions of subsection (3)(d) and (e) of this
6 section.

7 (b) When a vocational plan interruption is beyond the control of
8 the worker, the department or self-insurer shall recommence plan
9 development. If necessary to complete vocational services, the cost
10 and duration of the plan may include credit for that expended prior to
11 the interruption. A vocational plan interruption is considered outside
12 the control of the worker when it is due to the closure of the
13 accredited institution, when it is due to a death in the worker's
14 immediate family, or when documented changes in the worker's accepted
15 medical conditions prevent further participation in the vocational
16 plan.

17 (c) When a vocational plan interruption is the result of the
18 worker's actions, the worker's entitlement to benefits shall be
19 suspended in accordance with RCW 51.32.110. If plan development or
20 implementation is recommenced, the cost and duration of the plan shall
21 not include credit for that expended prior to the interruption. A
22 vocational plan interruption is considered a result of the worker's
23 actions when it is due to the failure to meet attendance expectations
24 set by the training or educational institution, failure to achieve
25 passing grades or acceptable performance review, unaccepted or
26 postinjury conditions that prevent further participation in the
27 vocational plan, or the worker's failure to abide by the accountability
28 agreement per subsection (3)(a) of this section.

29 **Sec. 3.** 2011 c 291 s 3 (uncodified) is amended to read as follows:
30 This act expires June 30, (~~(2013)~~) 2016.

31 **Sec. 4.** 2009 c 353 s 7 (uncodified) is amended to read as follows:
32 Section 5 of this act expires June 30, (~~(2013)~~) 2016.

33 **Sec. 5.** 2007 c 72 s 6 (uncodified) is amended to read as follows:
34 This act expires June 30, (~~(2013)~~) 2016.

1 NEW SECTION. **Sec. 6.** Section 1 of this act expires June 30, 2016.

2 NEW SECTION. **Sec. 7.** Section 2 of this act expires June 30, 2016.

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