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**HOUSE BILL 2409**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Kilduff, Pollet, Sells, Gregerson, Valdez, and Ormsby

AN ACT Relating to industrial insurance employer penalties, duties, and the licensing of third-party administrators; amending RCW 51.48.010, 51.48.017, 51.48.030, 51.48.040, 51.48.060, and 51.48.080; adding new sections to chapter 51.48 RCW; adding a new section to chapter 51.14 RCW; and prescribing penalties.

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

**Sec.**  RCW 51.48.010 and 1985 c 347 s 2 are each amended to read as follows:

Every employer shall be liable for the penalties described in this title and may also be liable if an injury or occupational disease has been sustained by a worker prior to the time he or she has secured the payment of such compensation to a penalty in a sum not less than fifty percent nor more than one hundred percent of the cost for such injury or occupational disease. Any employer who has failed to secure payment of compensation for his or her workers covered under this title may also be liable to a maximum penalty in a sum of ((~~five~~)) one thousand seven hundred dollars or in a sum double the amount of premiums incurred prior to securing payment of compensation under this title, whichever is greater, for the benefit of the medical aid fund.

**Sec.**  RCW 51.48.017 and 2010 c 8 s 14011 are each amended to read as follows:

((~~If~~)) Every time a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer ((~~upon order of the director~~)) an additional amount equal to ((~~five~~)) one thousand seven hundred dollars or twenty-five percent of the amount then due, whichever is greater, per each act of unreasonable delay by the self-insurer, which shall accrue for the benefit of the claimant and shall be paid to him or her with the benefits which may be assessed under this title. The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits and the penalty amount owed within thirty days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050.

**Sec.**  RCW 51.48.030 and 1986 c 9 s 8 are each amended to read as follows:

Every employer who fails to keep and preserve the records required by this title or fails to make the reports provided in this title shall be subject to a penalty determined by the director but not to exceed ((~~two~~)) eight hundred fifty dollars or two hundred percent of the quarterly tax for each such offense, whichever is greater. Any employer who fails to keep and preserve the records adequate to determine taxes due shall be forever barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department based on any period for which such records have not been kept and preserved.

**Sec.**  RCW 51.48.040 and 2003 c 53 s 282 are each amended to read as follows:

(1) The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title.

(2) Refusal on the part of the employer to submit his or her books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed ((~~two~~)) eight hundred fifty dollars for each offense and the individual who personally gives such refusal is guilty of a misdemeanor.

(3) Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection.

**Sec.**  RCW 51.48.060 and 2004 c 65 s 14 are each amended to read as follows:

Any physician or licensed advanced registered nurse practitioner who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured worker at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title, shall be subject to a civil penalty determined by the director but not to exceed ((~~two~~)) eight hundred fifty dollars.

**Sec.**  RCW 51.48.080 and 1985 c 347 s 7 are each amended to read as follows:

Every person, firm or corporation who violates or fails to obey, observe or comply with any statutory provision of this title or rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed ((~~five~~)) one thousand seven hundred dollars.

NEW SECTION. **Sec.**  A new section is added to chapter 51.48 RCW to read as follows:

The minimum penalties payable pursuant to this chapter shall be adjusted every July 1st by the percentage change in the average monthly wage in the state under RCW 51.08.018 for the preceding calendar year, rounded to the nearest whole cent.

NEW SECTION. **Sec.**  A new section is added to chapter 51.48 RCW to read as follows:

(1) All employers and employers' lay representatives have a fiduciary duty to workers of good faith and fair dealing relating to all aspects of this title.

(2) An employer violates its fiduciary duty to the worker if it or its representative persuades a worker to accept less than the compensation due under this title, induces or coerces a worker who is entitled to temporary total disability benefits under this title to return to work in contravention of RCW 51.32.090(4), or otherwise fails to act in good faith regarding its obligations under this title. The department shall adopt by rule additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violation of its duties. In adopting a rule under this subsection, the department shall consider, among other factors, recognized and approved claim processing practices within the insurance industry, the department's own experience, and the industrial insurance and insurance laws and rules of this state.

(3) The department shall investigate each alleged violation of this section upon the filing of a written complaint or upon its own motion. The department shall require the employer or its representative to file a written, substantive response and such response shall be due within fifteen working days of the department's request. A department order determining whether a violation has occurred and conforming with RCW 51.52.050 shall be issued within thirty days of a request for an investigation. An order finding that a violation of subsection (2) of this section has occurred shall also order the employer to pay a penalty of one to ten times the average weekly wage at the time of the order, depending upon the severity of the violation, which accrues for the benefit of the worker.

NEW SECTION. **Sec.**  A new section is added to chapter 51.14 RCW to read as follows:

(1) Self-insured employers may elect to have their claims administered by a third party or they may elect to self-administer their claims. Regardless of which method of claims administration chosen by self-insured employers, persons, and businesses who are given the responsibility of administering the claims of workers shall be licensed by the department.

(2) The department shall adopt rules to administer this section.

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