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**SENATE BILL 5524**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Van De Wege, Keiser, Lovick, Cleveland, Conway, Hasegawa, and Holy

AN ACT Relating to industrial insurance self-insured employer and third-party administrator penalties and duties; amending RCW 51.48.080 and 51.48.017; adding a new section to chapter 51.14 RCW; creating a new section; and prescribing penalties.

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

**Sec.**  RCW 51.48.080 and 2020 c 277 s 6 are each amended to read as follows:

(1) Every person, firm, or corporation who violates or fails to obey, observe, or comply with any statutory provision of this ((~~act~~)) title or rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed ((~~one thousand dollars~~)) $1,000.

(2) The department may, for a violation of section 3 of this act, assess a penalty not to exceed three times the penalties provided in subsection (1) of this section, including adjustments pursuant to RCW 51.48.095.

**Sec.**  RCW 51.48.017 and 2020 c 277 s 2 are each amended to read as follows:

(1) Every time a self-insurer unreasonably delays or refuses to pay benefits as they become due, the self-insurer shall pay a penalty not to exceed the greater of ((~~one thousand dollars~~)) $1,000 or ((~~twenty-five~~)) 25 percent of: (a) The amount due or (b) each underpayment made to the claimant. For purposes of this section, "the amount due" means the total amount of payments due at the time of the calculation of the penalty.

(2) In making the determination of the penalty amount, the department shall weigh at least the following factors: The amount of any payment delayed, employer communication of the basis for or calculation of the payment, history or past practice of underpayments by the employer, department orders directing the payment, and any required adjustments to the amount of the payment.

(3) 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~~)) 30 days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050.

(4) The penalty shall accrue for the benefit of the claimant and shall be paid to the claimant with the benefits which may be assessed under this title.

(5) The department may, for a violation of section 3 of this act, assess a penalty not to exceed three times the penalties provided in subsection (1) of this section, including adjustments pursuant to RCW 51.48.095.

(6) This section applies to all requests for penalties made after September 1, 2020.

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

(1) All self-insured employers and self-insured employers' lay representative third-party administrators have a duty of good faith and fair dealing to workers relating to all aspects of this title.

(2) An employer violates its duty to the worker if the self-insured employer or its representative wrongfully induces a worker to accept less than the compensation due under this title, or otherwise fails to act in good faith regarding its obligations under this title. The department must 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 must 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 must investigate each alleged violation of this section upon the filing of a written complaint or upon its own motion. The department must require the employer or its representative to file a written, substantive response, and such response is due 15 working days after the department's request. A department order determining whether a violation has occurred and conforming with RCW 51.52.050 must be issued within 30 days of a request for an investigation. An order finding that a violation of subsection (2) of this section has occurred must also order the employer to pay a penalty of one to 10 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.**  This act applies to all claims regardless of the date of injury.

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