

SHB 1521 - S AMD 463
By Senator Keiser

ADOPTED 04/20/2023

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

3 **"Sec. 1.** RCW 51.48.080 and 2020 c 277 s 6 are each amended to
4 read as follows:

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

10 (2) The department may, for a violation of section 3 of this act,
11 assess a penalty not to exceed three times the penalties provided in
12 subsection (1) of this section, including adjustments pursuant to RCW
13 51.48.095.

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

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

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

29 (3) The director shall issue an order determining whether there
30 was an unreasonable delay or refusal to pay benefits and the penalty
31 amount owed within ((thirty)) 30 days upon the request of the

1 claimant. Such an order shall conform to the requirements of RCW
2 51.52.050.

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

6 (5) The department may, for a violation of section 3 of this act,
7 assess a penalty not to exceed three times the penalties provided in
8 subsection (1) of this section, including adjustments pursuant to RCW
9 51.48.095.

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

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.14
13 RCW to read as follows:

14 (1) All self-insured municipal employers and self-insured private
15 sector firefighter employers and their third-party administrators
16 have a duty of good faith and fair dealing to workers relating to all
17 aspects of this title. The duty of good faith requires fair dealing
18 and equal consideration for the worker's interests.

19 (2) A self-insured municipal employer or self-insured private
20 sector firefighter employer or their third-party administrator
21 violates its duty to the worker if it coerces a worker to accept less
22 than the compensation due under this title, or otherwise fails to act
23 in good faith and fair dealing regarding its obligations under this
24 title.

25 (3) The department shall adopt by rule additional applications of
26 the duty of good faith and fair dealing as well as criteria for
27 determining appropriate penalties for violations. In adopting a rule
28 under this subsection, the department shall consider, among other
29 factors, recognized and approved claim processing practices within
30 the insurance industry, the department's own experience, and the
31 industrial insurance and insurance laws and rules of this state.

32 (4) The department shall investigate each alleged violation of
33 this section upon the filing of a written complaint or upon its own
34 motion. After receiving notice and a request for a response from the
35 department, the municipal employer or private sector firefighter
36 employer or their third-party administrator may file a written
37 response within 10 working days. If the municipal employer or private
38 sector firefighter employer or their third-party administrator fails

1 to file a timely response, the department shall issue an order based
2 on available information.

3 (5) The department shall issue an order determining whether a
4 violation of this section has occurred, in conformance with RCW
5 51.52.050, within 30 calendar days of receipt of a complete complaint
6 or its own motion. An order finding that a violation has occurred
7 must also order the municipal employer or private sector firefighter
8 employer to pay a penalty of one to 52 times the average weekly wage
9 at the time of the order, depending upon the severity of the
10 violation, which accrues for the benefit of the worker.

11 (6) The definitions in this subsection apply throughout this
12 section unless the context clearly requires otherwise.

13 (a) "Municipal" means any counties, cities, towns, port
14 districts, water-sewer districts, school districts, metropolitan park
15 districts, fire districts, public hospital districts, regional fire
16 protection service authorities, education service districts, or such
17 other units of local government.

18 (b) "Private sector firefighter employer" means any private
19 sector employer who employs over 50 firefighters, including
20 supervisors, on a full-time, fully compensated basis as a firefighter
21 of the employer's fire department, only with respect to their
22 firefighters.

23 **Sec. 4.** RCW 51.14.080 and 1986 c 57 s 7 are each amended to read
24 as follows:

25 (1) Certification of a self-insurer shall be withdrawn by the
26 director upon one or more of the following grounds:

27 ~~((1))~~ (a) The employer no longer meets the requirements of a
28 self-insurer; or

29 ~~((2))~~ (b) The self-insurer's deposit is insufficient; or

30 ~~((3))~~ (c) The self-insurer intentionally or repeatedly induces
31 employees to fail to report injuries, induces claimants to treat
32 injuries in the course of employment as off-the-job injuries,
33 persuades claimants to accept less than the compensation due, or
34 unreasonably makes it necessary for claimants to resort to
35 proceedings against the employer to obtain compensation; or

36 ~~((4))~~ (d) The self-insurer habitually fails to comply with
37 rules and regulations of the director regarding reports or other
38 requirements necessary to carry out the purposes of this title; or

1 ~~((5))~~ (e) The self-insurer habitually engages in a practice of
2 arbitrarily or unreasonably refusing employment to applicants for
3 employment or discharging employees because of nondisabling bodily
4 conditions; or

5 ~~((6))~~ (f) The self-insurer fails to pay an insolvency
6 assessment under the procedures established pursuant to RCW
7 51.14.077; or

8 (g) (i) For a self-insured municipal employer, the self-insurer
9 has been found to have violated the self-insurer's duty of good faith
10 and fair dealing three times within a three-year period.

11 (ii) For purposes of determining whether there have been three
12 violations within a three-year period, the director must use the date
13 of the department's order. Any subsequent order of the department,
14 board of industrial insurance appeals, or courts affirming a
15 violation occurred relates back to the date of the department's
16 order.

17 (iii) Errors or delays that are inadvertent or minor are not
18 considered violations of good faith and fair dealing for purposes of
19 this subsection (1)(g).

20 (2) The director may delay withdrawing the certification of the
21 self-insured municipal employer while the employer has an enforceable
22 contract with a licensed third-party administrator that may not be
23 legally terminated. However, the self-insured municipal employer may
24 not renew or extend the contract.

25 (3) For the purposes of this section, "municipal" has the same
26 meaning as defined in section 3 of this act.

27 NEW SECTION. Sec. 5. A new section is added to chapter 51.14
28 RCW to read as follows:

29 Nothing in this act shall be interpreted as allowing a private
30 cause of action outside of the original jurisdiction of the
31 department to assess penalties and rights to appeal as provided in
32 this title.

33 NEW SECTION. Sec. 6. This act applies to all claims regardless
34 of the date of injury.

35 NEW SECTION. Sec. 7. This act takes effect July 1, 2024."

ADOPTED 04/20/2023

1 On page 1, line 2 of the title, after "duties;" strike the
2 remainder of the title and insert "amending RCW 51.48.080, 51.48.017,
3 and 51.14.080; adding new sections to chapter 51.14 RCW; creating a
4 new section; prescribing penalties; and providing an effective date."

EFFECT: (1) Limits the duty of good faith and fair dealing and related penalties to self-insured municipal employers and self-insured private sector firefighter employers and their third-party administrators and provides that the duty of good faith requires fair dealing and equal consideration for the worker's interests.

(2) Adds definitions for "municipal" and "private sector firefighter employer."

(3) Provides as a ground for withdrawal of a certification of a self-insurer by the L&I director that for a self-insured municipal employer, the self-insurer has been found to have violated the self-insurer's duty of good faith and fair dealing three times within a three-year period, which must use the date of the L&I's order and any subsequent orders of the L&I, Board of Industrial Insurance Appeals, or courts affirming a violation occurred relates back to the date of the department's order. Allows the L&I director to delay withdrawing the certification while the employer has an enforceable contract with a licensed third-party administrator that may not be legally terminated; however, the self-insured municipal employer may not renew or extend the contract. Provides that errors or delays that are inadvertent or minor are not considered violations of good faith and fair dealing for purposes of withdrawal of a certification.

(4) Provides that nothing in the act be interpreted as allowing a private cause of action outside the original jurisdiction of L&I to assess penalties and rights to appeal.

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