

HOUSE BILL REPORT

SHB 2127

As Passed Legislature

Title: An act relating to increasing incentives to return to work in workers' compensation.

Brief Description: Concerning workers' compensation incentives to return to work.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Schmidt, Berry, Leavitt, Reed, Ormsby, Graham and Pollet; by request of Department of Labor & Industries).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/16/24, 1/24/24 [DPS].

Floor Activity:

Passed House: 2/6/24, 97-0.

Passed Senate: 2/29/24, 46-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Modifies certain return to work policies and reimbursement amounts under the workers' compensation program.
- Increases the maximum amounts of reimbursements paid to employers participating in the Stay at Work Program and Preferred Worker Program by the Department of Labor and Industries (L&I).
- Increases the maximum amount paid to qualifying employers for job modification costs by L&I.
- Allows L&I to authorize payments for basic skills development for qualifying injured workers.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Schmidt, Ranking Minority Member; Bronoske, Doglio, Ormsby, Ortiz-Self, Rude and Ybarra.

Staff: Kelly Leonard (786-7147).

Background:

Workers who are injured or disabled in the course of employment are entitled to certain benefits through the workers' compensation program, administered by the Department of Labor and Industries (L&I). Benefits may include medical costs, temporary time-loss, vocational rehabilitation benefits, and permanent disabilities benefits.

Returning to Light Duty Work with a Temporary Disability.

A worker has a temporary total disability when an injury or occupational disease temporarily and totally disables his or her ability to return to work. However, in the instance of a temporary disability, the employer may facilitate the injured worker's return to work by providing light duty or transitional work approved by a physician or licensed advanced registered nurse practitioner.

Stay at Work Program. Through the Stay at Work Program, the state provides wage subsidies and other incentives to employers insured through L&I who provide light duty and transitional work to injured workers. If an employer facilitates a return to light duty or transitional work, the employer is eligible to be reimbursed for certain costs associated with the light duty and transitional work, including:

- 50 percent of the basic, gross wages, for a maximum of 66 work days within a consecutive 24-month period, up to \$10,000;
- tuition, books, fees, and materials, up to \$1,000;
- clothing, up to \$400; and
- tools or equipment, up to \$2,500.

Reimbursements for the Stay at Work Program are paid from the Stay at Work Account, which is funded by assessments on employers. Employers are permitted to collect up to one-half of the assessment from workers.

Returning to Work with a Permanent Disability.

In cases where a worker is permanently unable to return to the same job, L&I has various programs and provides employers with various incentives to facilitate the worker's return to the workplace.

Vocational Benefits and Vocational Retraining Plans. In certain instances, L&I may pay, or direct self-insurers to pay, the costs of vocational rehabilitation services when these services are necessary and likely to enable the injured worker to become employable at gainful employment. L&I may assign a vocational counselor to help an injured worker and

employer explore return to work opportunities. An injured worker who is unable to work within their restrictions may be eligible for retraining assistance to learn new skills. L&I may approve a vocational retraining plan developed by a counselor. The plan may include schooling or on-the-job training for up to two years. Vocational retraining plans must include several elements identified in statute.

If L&I approves vocational benefits or a retraining plan, it may pay certain costs for books, tuition, supplies, transportation, and related child care costs, in addition to time-loss benefits, while the worker is actively participating in an approved vocational program. L&I may also pay up to \$5,000, for any accommodations that are medically necessary for the worker to participate in the program.

Job Modification. In determining whether to provide vocational and other services, L&I must prioritize certain options, including facilitating the injured worker's return to work with the same employer in the same position or a modified position. In order to assist an employer with the costs of job modification, L&I may pay an employer's job modification costs, up to \$5,000 per worker.

Preferred Worker Program. The Preferred Worker Program (PWP) provides financial incentives to employers who hire workers who have been injured in previous employment and are permanently restricted from certain duties due to their injuries. The PWP is only available if a vocational rehabilitation professional and the injured worker's health care provider have confirmed that the worker has returned to work that is reasonably consistent with the worker's restrictions.

To qualify for the PWP, the worker must first be certified by L&I as a "preferred worker." An employer hiring a preferred worker is eligible for discounts on its Accident Fund and Medical Aid premiums for as long as the worker is a certified a "preferred worker," up to 36 months. If the worker is injured on the job during the worker's certification period, the employer is not liable for the costs of the new claim, and it will not affect the employer's experience rating. The employer is eligible for reimbursement for a portion of the preferred worker's base wages, tools and equipment, and clothing, at the same rate permitted under the Stay at Work Program. The employer is also eligible to receive a one-time payment of 10 percent of the worker's wages, up to \$10,000, if the worker is continuously employed without a reduction in wages for at least 12 months.

Summary of Substitute Bill:

Returning to Light Duty Work with a Temporary Disability.

Stay at Work Program. The reimbursement amounts that can be paid to employers in the Stay at Work Program are increased, as follows:

- 50 percent of the basic, gross wages, for a maximum of 120 work days within a consecutive 24-month period, up to \$25,000;

- tuition, books, fees, and materials, up to \$2,000;
- clothing, up to \$1,000; and
- tools or equipment, up to \$5,000.

The Stay at Work Account is modified. Payments for L&I-approved training providers may be made from the account for the purposes of providing optional basic skills development under the bill.

Returning to Work with a Permanent Disability.

Basic Skills Development. Prior to or during the development of a vocational retraining plan, L&I may authorize payments for basic skills development for qualifying workers. Participation in basic skills development is optional. Basic skills development could include: (1) English language training; (2) basic computer literacy; (3) general education development or high school equivalency training; (4) technology or software needed to effectively participate in basic skills development; (5) tutoring for approved basic skills training; and (6) other skills that prepare an injured worker for gainful employment. Eligibility of training for this funding is based upon a recommendation from the assigned vocational rehabilitation counselor, and is discretionary on the part of L&I.

Funds for basic skills development are available once per claim equal to 25 percent of the maximum funding available for a vocational retraining plan, though the use of the funds does not reduce any funds available for a subsequent vocational retraining plan. Funds are paid directly to training providers or to vendors to procure necessary equipment or assistance, and may not be paid directly to the worker. Self-insured employers must pay for the costs of basic skills development for their injured workers.

Vocational Rehabilitation. The maximum amount that L&I may pay for certain accommodations necessary to support a worker's vocational program is increased to \$10,000.

Job Modification. The maximum amount that L&I may pay to assist with an employer's job modification is increased to \$10,000.

Preferred Worker Program. The PWP is only available if a professional employed by L&I has determined that the worker has returned to work that is reasonably consistent with the worker's restrictions. The requirement that the work be approved by a health care provider is removed.

The maximum reimbursements available for base wages, tools and equipment, and clothing, are increased to the same amounts permitted under the Stay at Work Program. The maximum one-time payment to incentivize continuous employment for 12 months is increased to \$25,000.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony:

(In support) The bill is an important expansion of programs that have been successful for both employers and workers in the workers' compensation system. Data shows that the sooner a worker returns to work, the better the outcomes for their health and employment prospects. In contrast, if a worker leaves work for more than six months due to a temporary disability, the worker is highly unlikely to ever return to the workforce. In particular, the Stay at Work Program and Preferred Worker Program have incentivized employers to provide light duty work, while also supporting workers to recover from their injuries. L&I, businesses, and practitioners now have years of experience with these programs, and it is an appropriate time to adjust reimbursement rates and expand options. The adjustments to reimbursement rates take into account inflation.

The bill also creates more flexibility for L&I to assist workers with basic skills development in order to facilitate access to vocational rehabilitation programs. Many injured workers are employed in high-risk and physically demanding jobs. Often these jobs are more accessible to workers who lack certain basic skills. In turn, these workers are less likely to qualify for other less physically demanding jobs. By allowing L&I to facilitate basic skills development, like English language classes or computer courses, then the worker may become eligible for other vocational programs or return to work opportunities.

The bill should be amended to create more flexibility around the timing of basic skills development. It should be possible for basic skills development and vocational planning to occur simultaneously. There should also be accountability measures put in place to ensure that workers participating in this program actually follow through.

The Legislature should consider expanding return to work opportunities in other ways. Many workers do not qualify for these programs because light duty work can only be offered by the employer of injury.

(Opposed) None.

Persons Testifying: Representative Suzanne Schmidt, prime sponsor; Brenda Heilman, Department of Labor and Industries; Lauren Gubbe, Associated General Contractors of Washington; Bruce Beckett, Washington Retail Association; and Robert Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.