
SENATE BILL 5488

State of Washington

52nd Legislature

1991 Regular Session

By Senators McMullen, Murray, A. Smith, Vognild, Madsen, Bauer, Rinehart, Moore, Sutherland, Conner and L. Smith.

Read first time February 4, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to maintaining employee benefits; amending RCW
2 51.32.090; providing an effective date; and declaring an emergency.

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

4 **Sec. 1.** RCW 51.32.090 and 1988 c 161 s 4 are each amended to read
5 as follows:

6 (1) When the total disability is only temporary, the schedule of
7 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
8 the total disability continues.

9 (2) Any compensation payable under this section for children not in
10 the custody of the injured worker as of the date of injury shall be
11 payable only to such person as actually is providing the support for
12 such child or children pursuant to the order of a court of record
13 providing for support of such child or children.

14 (3) As soon as recovery is so complete that the present earning
15 power of the worker, at any kind of work, is restored to that existing

1 at the time of the occurrence of the injury, the payments shall cease.
2 If and so long as the present earning power is only partially restored,
3 the payments shall continue in the proportion which the new earning
4 power shall bear to the old. No compensation shall be payable unless
5 the loss of earning power shall exceed five percent.

6 (4)(a) Whenever ~~((an))~~ the employer of injury requests that a
7 worker who is entitled to temporary total disability under this chapter
8 be certified by a physician as able to perform available work other
9 than his or her usual work, the employer shall furnish to the
10 physician, with a copy to the worker, a statement describing the
11 ~~((available))~~ work available with the employer of injury in terms that
12 will enable the physician to relate the physical activities of the job
13 to the worker's disability. The physician shall then determine whether
14 the worker is physically able to perform the work described. ~~((If))~~
15 The worker's temporary total disability payments shall continue until
16 the worker is released by his or her physician for ~~((said))~~ the work,
17 and begins the work with the employer of injury. If the work
18 thereafter comes to an end before the worker's recovery is sufficient
19 in the judgment of his or her physician to permit him or her to return
20 to his or her usual job, or to perform other available work offered by
21 the employer of injury, the worker's temporary total disability
22 payments shall be resumed. Should the available work described, once
23 undertaken by the worker, impede his or her recovery to the extent that
24 in the judgment of his or her physician he or she should not continue
25 to work, the worker's temporary total disability payments shall be
26 resumed when the worker ceases such work.

27 (b) Once the worker returns to work under the terms of this
28 subsection (4), he or she shall not be assigned by the employer to work
29 other than the available work described without the worker's written

1 consent, or without prior review and approval by the worker's
2 physician.

3 (c) If the worker returns to work under this subsection (4), any
4 employee health and welfare benefits that the worker was receiving at
5 the time of injury shall continue or be resumed at the level provided
6 at the time of injury.

7 (d) In the event of any dispute as to the worker's ability to
8 perform the available work offered by the employer, the department
9 shall make the final determination.

10 (5) No worker shall receive compensation for or during the day on
11 which injury was received or the three days following the same, unless
12 his or her disability shall continue for a period of fourteen
13 consecutive calendar days from date of injury: PROVIDED, That attempts
14 to return to work in the first fourteen days following the injury shall
15 not serve to break the continuity of the period of disability if the
16 disability continues fourteen days after the injury occurs.

17 (6) Should a worker suffer a temporary total disability and should
18 his or her employer at the time of the injury continue to pay him or
19 her the wages which he or she was earning at the time of such injury,
20 such injured worker shall not receive any payment provided in
21 subsection (1) of this section during the period his or her employer
22 shall so pay such wages.

23 (7) In no event shall the monthly payments provided in this section
24 exceed one hundred percent of the average monthly wage in the state as
25 computed under the provisions of RCW 51.08.018.

26 (8) If the supervisor of industrial insurance determines that the
27 worker is voluntarily retired and is no longer attached to the work
28 force, benefits shall not be paid under this section.

1 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect July 1, 1991.