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HOUSE BILL 1873

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State of Washington                      53rd Legislature                      1993 Regular Session

By Representatives King, Heavey, Conway, Jones and Johanson

Read first time 02/12/93. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to a return-to-work and vocational retraining  
2 program for injured workers; amending RCW 51.32.095; and adding a new  
3 section to chapter 70.47 RCW.

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

5            **Sec. 1.** RCW 51.32.095 and 1988 c 161 s 9 are each amended to read  
6 as follows:

7            (1) One of the primary purposes of this title is to enable the  
8 injured worker to become employable at suitable and gainful employment.  
9 To this end, the ~~((department or self-insurers shall utilize the))~~  
10 services of individuals and organizations, public or private, whose  
11 experience, training, and interests in vocational rehabilitation and  
12 retraining qualify them to lend expert assistance to the ~~((supervisor~~  
13 ~~of industrial insurance in such programs of vocational rehabilitation~~  
14 ~~as may be reasonable to make the worker employable consistent with his~~  
15 ~~or her physical and mental status. Where, after evaluation and~~  
16 ~~recommendation by such individuals or organizations and prior to final~~  
17 ~~evaluation of the worker's permanent disability and in the sole opinion~~  
18 ~~of the supervisor or supervisor's designee, whether or not medical~~  
19 ~~treatment has been concluded, vocational rehabilitation is both~~

1 necessary and likely to enable the injured worker to become employable  
2 at gainful employment, the supervisor or supervisor's designee may, in  
3 his or her sole discretion, pay or, if the employer is a self-insurer,  
4 direct the self-insurer to pay the cost as provided in subsection (3)  
5 of this section.

6 (2) ~~When in the sole discretion of the supervisor or the~~  
7 ~~supervisor's designee vocational rehabilitation is both necessary and~~  
8 ~~likely to make the worker employable at gainful employment, then the~~  
9 ~~following order of priorities shall be used:~~

10 (a) ~~Return to the previous job with the same employer;~~

11 (b) ~~Modification of the previous job with the same employer~~  
12 ~~including transitional return to work;~~

13 (c) ~~A new job with the same employer in keeping with any~~  
14 ~~limitations or restrictions;~~

15 (d) ~~Modification of a new job with the same employer including~~  
16 ~~transitional return to work;~~

17 (e) ~~Modification of the previous job with a new employer;~~

18 (f) ~~A new job with a new employer or self-employment based upon~~  
19 ~~transferable skills;~~

20 (g) ~~Modification of a new job with a new employer;~~

21 (h) ~~A new job with a new employer or self-employment involving on-~~  
22 ~~the-job training;~~

23 (i) ~~Short-term retraining and job placement.~~

24 (3) ~~Costs for vocational rehabilitation benefits allowed by the~~  
25 ~~supervisor or supervisor's designee under subsection (1) of this~~  
26 ~~section may include the cost of books, tuition, fees, supplies,~~  
27 ~~equipment, transportation, child or dependent care, and other necessary~~  
28 ~~expenses for any such worker in an amount not to exceed three thousand~~  
29 ~~dollars in any fifty-two week period, and the cost of continuing the~~  
30 ~~temporary total disability compensation under RCW 51.32.090 while the~~  
31 ~~worker is actively and successfully undergoing a formal program of~~  
32 ~~vocational rehabilitation. Such expenses may include training fees for~~  
33 ~~on-the-job training and the cost of furnishing tools and other~~  
34 ~~equipment necessary for self-employment or reemployment: PROVIDED,~~  
35 ~~That such compensation or payment of retraining with job placement~~  
36 ~~expenses may not be authorized for a period of more than fifty-two~~  
37 ~~weeks: PROVIDED FURTHER, That such period may, in the sole discretion~~  
38 ~~of the supervisor after his or her review, be extended for an~~

1 ~~additional fifty two weeks or portion thereof by written order of the~~  
2 ~~supervisor.~~

3 ~~In cases where the worker is required to reside away from his or~~  
4 ~~her customary residence, the reasonable cost of board and lodging shall~~  
5 ~~also be paid. Said costs shall be chargeable to the employer's cost~~  
6 ~~experience or shall be paid by the self-insurer as the case may be))~~  
7 ~~department or self-insurer may be used to assist in vocational~~  
8 ~~retraining efforts as authorized under this section.~~

9 (2) When an injured worker's attending physician has authorized the  
10 worker to return to work-related activity or to participate in  
11 vocational retraining efforts, the department shall notify the employer  
12 of record of the physician's authorization. If within sixty days of  
13 the receipt of notice by the employer, the injured worker has not  
14 returned to employment with the employer of record or with a new  
15 employer, in either case at a position paying wages at least equal to  
16 eighty percent of the worker's wages at the time of injury, the injured  
17 worker, at the worker's option:

18 (a) Is eligible for payments under this subsection (2)(a) as long  
19 as the present earning power of the worker is only partially restored.  
20 The payments shall be made in the proportion which the new earning  
21 power shall bear to the old. No compensation shall be payable unless  
22 the loss of earning power shall exceed five percent. Payments under  
23 this subsection (2)(a) shall be for a maximum period of five years from  
24 the date of the employer's receipt of notice of the physician's  
25 authorization, or for the period until the worker reaches age sixty-  
26 five, whichever period is less. The injured worker shall also be  
27 entitled to job placement services as defined by rules adopted by the  
28 director; or

29 (b) Is eligible for retraining as provided in this subsection  
30 (2)(b). The worker may choose his or her vocational rehabilitation  
31 counselor from a list maintained by the department or use a department  
32 vocational rehabilitation counselor, or the worker may elect to  
33 participate in educational assessment provided by the department.  
34 Retraining shall be provided under either (i) or (ii) of this  
35 subsection (2)(b), at the worker's option:

36 (i) Basic retraining. Under this option, the worker may choose a  
37 training program for a duration of up to two years. Costs of the  
38 program may include job placement expenses. Upon employment at the  
39 completion of training, the worker shall no longer be entitled to

1 temporary total disability compensation. When the worker has  
2 successfully completed thirty days of employment, the worker's  
3 condition shall be considered fixed for the purposes of RCW 51.32.055  
4 and the claim subject to closure under this title.

5 (ii) Optional retraining. Under this option, the worker may choose  
6 a training program for any appropriate period of time, including a  
7 period greater than two years. However, after two years in the  
8 program, entitlement to temporary total disability or loss of earning  
9 power compensation shall terminate and the claim shall be subject to  
10 closure under this title. However, a worker may apply to the director  
11 for an extension of compensation following the two-year period, and a  
12 decision to extend compensation for a period not to exceed the time  
13 period allowed for compensation under (a) of this subsection shall be  
14 at the director's discretion.

15 (3) Training costs allowed under subsection (2)(b) (i) and (ii) of  
16 this section include the cost of books, tuition, fees, supplies,  
17 equipment, and other necessary expenses in an amount not to exceed one  
18 hundred twenty-five percent of the average annual cost of higher  
19 education in the state, and include the cost of continuing the  
20 temporary total disability compensation or loss of earning power  
21 payments under RCW 51.32.090 while the worker is actively and  
22 successfully participating in the retraining program. In addition, the  
23 costs of transportation and child or dependent care related to the  
24 worker's participation in the training program are allowed. Expenses  
25 may include training fees for on-the-job training, and the cost of  
26 furnishing tools and other equipment necessary for self-employment or  
27 reemployment. If the worker is required to reside away from his or her  
28 customary residence, the reasonable cost of board and lodging shall  
29 also be paid.

30 (4) Workers participating in training under this section shall be  
31 eligible for the basic health plan under chapter 70.47 RCW. The  
32 department shall notify the workers of the availability of basic health  
33 care coverage and shall supply enrollment application forms as required  
34 under RCW 51.28.090.

35 (5) Costs of training shall be chargeable to the employer's cost  
36 experience or shall be paid by the self-insurer, as the case may be.

37 ~~((+4))~~ (6) The department shall establish criteria to monitor the  
38 quality and effectiveness of rehabilitation services provided by the  
39 individuals and organizations used under ~~((subsection (1) of))~~ this

1 section. The list maintained by the state fund (~~(shall make)~~) for  
2 referrals for vocational rehabilitation services must be based on these  
3 performance criteria.

4 ~~((+5))~~ (7) The department shall engage in(~~(, where feasible and~~  
5 ~~cost-effective,)~~) a cooperative program with the state employment  
6 security department to provide job placement services under this  
7 section.

8 ~~((+6))~~ (8) The benefits in this section shall be provided for the  
9 injured workers of self-insured employers. Self-insurers shall report  
10 both benefits provided and benefits denied under this section in the  
11 manner prescribed by the department by rule adopted under chapter 34.05  
12 RCW. The director may, in his or her sole discretion and upon his or  
13 her own initiative or at any time that a dispute arises under this  
14 section, promptly make such inquiries as circumstances require and take  
15 such other action as he or she considers will properly determine the  
16 matter and protect the rights of the parties.

17 ~~((+7))~~ (9) The benefits provided for in this section are available  
18 to any otherwise eligible worker regardless of the date of industrial  
19 injury. However, claims shall not be reopened solely for vocational  
20 rehabilitation purposes.

21 (10) Nothing in this section shall be construed to change, modify,  
22 or otherwise adversely affect the terms and conditions of employment  
23 applicable to a worker under a collective bargaining agreement.

24 NEW SECTION. Sec. 2. A new section is added to chapter 70.47 RCW  
25 to read as follows:

26 The administrator shall make the basic health plan available to  
27 workers participating in training under RCW 51.32.095. Persons assisted  
28 under this section shall meet the requirements of an enrollee as  
29 defined in RCW 70.47.020(4).

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