
ENGROSSED SENATE BILL 5580

State of Washington

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By Senators Wojahn, Roach, Thibaudeau, Fairley, Spanel, Prentice and Kohl-Welles

Read first time 01/28/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to industrial insurance benefits paid during
2 appeal; amending RCW 51.52.050, 51.16.140, and 43.79A.040; reenacting
3 and amending RCW 51.52.060; adding a new section to chapter 51.16 RCW;
4 adding a new section to chapter 51.44 RCW; and creating a new section.

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

6 **Sec. 1.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read
7 as follows:

8 (1) Whenever the department has made any order, decision, or award,
9 it shall promptly serve the worker, beneficiary, employer, or other
10 person affected thereby, with a copy thereof by mail, which shall be
11 addressed to such person at his or her last known address as shown by
12 the records of the department. The copy, in case the same is a final
13 order, decision, or award, shall bear on the same side of the same page
14 on which is found the amount of the award, a statement, set in black
15 faced type of at least ten point body or size, that such final order,
16 decision, or award shall become final within sixty days from the date
17 the order is communicated to the parties unless a written request for
18 reconsideration is filed with the department of labor and industries,
19 Olympia, or an appeal is filed with the board of industrial insurance

1 appeals, Olympia(~~(: PROVIDED, That)~~). However, a department order or
2 decision making demand, whether with or without penalty, for repayment
3 of sums paid to a provider of medical, dental, vocational, or other
4 health services rendered to an industrially injured worker, shall state
5 that such order or decision shall become final within twenty days from
6 the date the order or decision is communicated to the parties unless a
7 written request for reconsideration is filed with the department of
8 labor and industries, Olympia, or an appeal is filed with the board of
9 industrial insurance appeals, Olympia.

10 (2) Whenever the department has taken any action or made any
11 decision relating to any phase of the administration of this title, the
12 worker, beneficiary, employer, or other person aggrieved thereby may
13 request reconsideration of the department, or may appeal to the board.
14 If an employer requests reconsideration of a department order in favor
15 of an injured worker, temporary total disability compensation or
16 medical aid benefits granted to the worker by the order under
17 reconsideration shall continue while the reconsideration is pending,
18 subject to the requirements of RCW 51.32.240(3).

19 (3) In an appeal before the board, the appellant shall have the
20 burden of proceeding with the evidence to establish a prima facie case
21 for the relief sought in such appeal(~~(: PROVIDED, That)~~). However, in
22 an appeal from an order of the department that alleges fraud, the
23 department or self-insured employer shall initially introduce all
24 evidence in its case in chief. (~~Any such~~) A person aggrieved by the
25 decision and order of the board may thereafter appeal to the superior
26 court, as prescribed in this chapter.

27 **Sec. 2.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are
28 each reenacted and amended to read as follows:

29 (1)(a) Except as otherwise specifically provided in this section,
30 a worker, beneficiary, employer, health services provider, or other
31 person aggrieved by an order, decision, or award of the department
32 must, before he or she appeals to the courts, file with the board and
33 the director, by mail or personally, within sixty days from the day on
34 which a copy of the order, decision, or award was communicated to such
35 person, a notice of appeal to the board. However, a health services
36 provider or other person aggrieved by a department order or decision
37 making demand, whether with or without penalty, solely for repayment of
38 sums paid to a provider of medical, dental, vocational, or other health

1 services rendered to an industrially injured worker must, before he or
2 she appeals to the courts, file with the board and the director, by
3 mail or personally, within twenty days from the day on which a copy of
4 the order or decision was communicated to the health services provider
5 upon whom the department order or decision was served, a notice of
6 appeal to the board.

7 (b) Failure to file a notice of appeal with both the board and the
8 department shall not be grounds for denying the appeal if the notice of
9 appeal is filed with either the board or the department.

10 (2) Within ten days of the date on which an appeal has been granted
11 by the board, the board shall notify the other interested parties to
12 the appeal of the receipt of the appeal and shall forward a copy of the
13 notice of appeal to the other interested parties. Within twenty days
14 of the receipt of such notice of the board, the worker or the employer
15 may file with the board a cross-appeal from the order of the department
16 from which the original appeal was taken.

17 (3) If within the time limited for filing a notice of appeal to the
18 board from an order, decision, or award of the department, the
19 department directs the submission of further evidence or the
20 investigation of any further fact, the time for filing the notice of
21 appeal shall not commence to run until the person has been advised in
22 writing of the final decision of the department in the matter. In the
23 event the department directs the submission of further evidence or the
24 investigation of any further fact, as provided in this section, the
25 department shall render a final order, decision, or award within ninety
26 days from the date further submission of evidence or investigation of
27 further fact is ordered which time period may be extended by the
28 department for good cause stated in writing to all interested parties
29 for an additional ninety days.

30 (4) The department, either within the time limited for appeal, or
31 within thirty days after receiving a notice of appeal, may:

32 (a) Modify, reverse, or change any order, decision, or award; or

33 (b)(i) Except as provided in (b)(ii) of this subsection, hold an
34 order, decision, or award in abeyance for a period of ninety days which
35 time period may be extended by the department for good cause stated in
36 writing to all interested parties for an additional ninety days pending
37 further investigation in light of the allegations of the notice of
38 appeal; or

1 (ii) Hold an order, decision, or award issued under RCW 51.32.160
2 in abeyance for a period not to exceed ninety days from the date of
3 receipt of an application under RCW 51.32.160. The department may
4 extend the ninety-day time period for an additional sixty days for good
5 cause.

6 For purposes of this subsection, good cause includes delay that
7 results from conduct of the claimant that is subject to sanction under
8 RCW 51.32.110.

9 The board shall deny the appeal upon the issuance of an order under
10 (b)(i) or (ii) of this subsection holding an earlier order, decision,
11 or award in abeyance, without prejudice to the appellant's right to
12 appeal from any subsequent determinative order issued by the
13 department.

14 This subsection (4)(b) does not apply to applications deemed
15 granted under RCW 51.32.160.

16 (5) An employer shall have the right to appeal an application
17 deemed granted under RCW 51.32.160 on the same basis as any other
18 application adjudicated pursuant to that section.

19 (6) A provision of this section shall not be deemed to change,
20 alter, or modify the practice or procedure of the department for the
21 payment of awards pending appeal. However, if an employer appeals to
22 the board a department order granting temporary total disability
23 compensation or medical aid benefits to a worker, the worker shall be
24 entitled to the compensation or medical aid benefits while the appeal
25 is pending before the board, subject to the requirements of RCW
26 51.32.240(3).

27 NEW SECTION. Sec. 3. A new section is added to chapter 51.16 RCW
28 to read as follows:

29 All employers shall pay an assessment for the benefit repayment
30 account established in section 5 of this act. Every employer not
31 qualifying as a self-insurer shall pay, on the schedule required for
32 payment of premiums under RCW 51.16.060, a quarterly assessment of one-
33 half of one percent of the premium deduction made under RCW
34 51.16.140(1)(a)(i). Self-insurers shall pay a pro rata assessment in
35 a manner to be determined by the director. However, no assessments may
36 be made under this section in any calendar quarter if, on the first day
37 of the immediately preceding calendar quarter, the amount in the
38 benefit payment account is one hundred thousand dollars or more.

1 **Sec. 4.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read
2 as follows:

3 (1)(a) Except as provided in (b) of this subsection, every employer
4 who is not a self-insurer shall deduct from the pay of each of his or
5 her workers:

6 (i) One-half of the ((amount he or she)) premium the employer is
7 required to pay, for medical benefits within each risk classification.
8 Such amount shall be periodically determined by the director and
9 reported by him or her to all employers under this title((:—PROVIDED,
10 That)); and

11 (ii) Except as limited by subsection (2) of this section, one-half
12 of one percent of the premium deduction made under (a)(i) of this
13 subsection.

14 (b) The state governmental unit shall pay the entire ((amount))
15 premium, without deduction, into the medical aid fund for volunteers,
16 as defined in RCW 51.12.035, and the state apprenticeship council shall
17 pay the entire ((amount)) premium, without deduction, into the medical
18 aid fund for registered apprentices or trainees, for the purposes of
19 RCW 51.12.130. The deductions under this section ((is)) are not
20 authorized for premiums assessed under RCW 51.16.210.

21 (2) The amount deducted under subsection (1)(a)(ii) of this section
22 shall be paid by the employer along with the employer premiums and
23 assessments required under this title. The amounts remitted shall be
24 deposited into the benefit repayment account established under section
25 5 of this act. However, no deduction may be made under subsection
26 (1)(a)(ii) of this section in any calendar quarter if, on the first day
27 of the immediately preceding calendar quarter, the amount in the
28 benefit payment account is one hundred thousand dollars or more.

29 (3) It shall be unlawful for the employer, unless specifically
30 authorized by this title, to deduct or obtain any part of the premium
31 or other costs required to be by him or her paid from the wages or
32 earnings of any of his or her workers, and the making of or attempt to
33 make any such deduction shall be a gross misdemeanor.

34 NEW SECTION. Sec. 5. A new section is added to chapter 51.44 RCW
35 to read as follows:

36 The benefit repayment account is created in the custody of the
37 state treasurer. All receipts from the deductions required under RCW
38 51.16.140(1)(a)(ii) and assessments under section 3 of this act shall

1 be deposited into the account. Transfers from the benefit repayment
2 account to the medical aid fund or the accident fund, or payments from
3 the account to self-insured employers, as applicable, shall be made
4 when benefits are paid under RCW 51.52.050(2) or 51.52.060(6), the
5 department order granting benefits is reversed or modified resulting in
6 an overpayment of benefits to the worker, and the director has
7 exercised his or her discretion to waive recovery of the overpayment
8 under RCW 51.32.240(3).

9 **Sec. 6.** RCW 43.79A.040 and 1998 c 268 s 1 are each amended to read
10 as follows:

11 (1) Money in the treasurer's trust fund may be deposited, invested,
12 and reinvested by the state treasurer in accordance with RCW 43.84.080
13 in the same manner and to the same extent as if the money were in the
14 state treasury.

15 (2) All income received from investment of the treasurer's trust
16 fund shall be set aside in an account in the treasury trust fund to be
17 known as the investment income account.

18 (3) The investment income account may be utilized for the payment
19 of purchased banking services on behalf of treasurer's trust funds
20 including, but not limited to, depository, safekeeping, and
21 disbursement functions for the state treasurer or affected state
22 agencies. The investment income account is subject in all respects to
23 chapter 43.88 RCW, but no appropriation is required for payments to
24 financial institutions. Payments shall occur prior to distribution of
25 earnings set forth in subsection (4) of this section.

26 (4)(a) Monthly, the state treasurer shall distribute the earnings
27 credited to the investment income account to the state general fund
28 except under (b) and (c) of this subsection.

29 (b) The following accounts and funds shall receive their
30 proportionate share of earnings based upon each account's or fund's
31 average daily balance for the period: The Washington advanced college
32 tuition payment program account, the agricultural local fund, the
33 American Indian scholarship endowment fund, the Washington
34 international exchange scholarship endowment fund, the energy account,
35 the fair fund, the game farm alternative account, the grain inspection
36 revolving fund, the rural rehabilitation account, the stadium and
37 exhibition center account, the youth athletic facility grant account,
38 the self-insurance revolving fund, the sulfur dioxide abatement

1 account, (~~and~~) the children's trust fund, and the benefit repayment
2 account. However, the earnings to be distributed shall first be
3 reduced by the allocation to the state treasurer's service fund
4 pursuant to RCW 43.08.190.

5 (c) The following accounts and funds shall receive eighty percent
6 of their proportionate share of earnings based upon each account's or
7 fund's average daily balance for the period: The advanced right of way
8 revolving fund, the advanced environmental mitigation revolving
9 account, the federal narcotics asset forfeitures account, the high
10 occupancy vehicle account, the local rail service assistance account,
11 and the miscellaneous transportation programs account.

12 (5) In conformance with Article II, section 37 of the state
13 Constitution, no trust accounts or funds shall be allocated earnings
14 without the specific affirmative directive of this section.

15 NEW SECTION. **Sec. 7.** Sections 3 and 4 of this act apply to
16 premiums and assessments for calendar quarters beginning on or after
17 July 1, 1999.

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