

SENATE BILL REPORT

ESSB 6395

As Passed Senate, February 11, 2004

Title: An act relating to applications for compensation under the industrial insurance system.

Brief Description: Concerning applications for compensation under the industrial insurance system.

Sponsors: Senate Committee on Commerce & Trade (originally sponsored by Senator Honeyford).

Brief History:

Committee Activity: Commerce & Trade: 1/22/04, 2/4/04 [DPS, DNP].

Passed Senate: 2/11/04, 30-19.

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 6395 be substituted therefor, and the substitute bill do pass.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; and Mulliken.

Minority Report: Do not pass.

Signed by Senators Franklin and Keiser.

Staff: Jennifer Strus (786-7316)

Background: A worker who is injured as a result of an accident that occurred on the job, or someone on his or her behalf, must "forthwith" report the injury to the worker's employer, superintendent or supervisor. Once the injury is reported to the employer, the employer must report the accident and injury to the Department of Labor and Industries (L&I) "at once" if the worker has received treatment from a physician, has been hospitalized, disabled from work or has died as a result of the accident and injury. There is no time period by which either the worker or the employer must comply with their reporting responsibilities.

The worker must file a claim for an occupational disease or infection within two years after the worker receives written notice from a physician of the existence of the disease and that a claim for disability benefits may be filed. The physician must file the notice with L&I. The written notice provided to the worker by the physician must also contain a statement that the worker has two years from the date of the notice to file a claim. L&I must send a copy of the physician's notice to the worker and the worker's self-insurer, if applicable.

If a worker receiving workers' compensation benefits believes a change in circumstances warrants an increase or rearrangement of his or her compensation award, the worker can apply for the change. If the application is approved, L&I must provide the compensation difference to the worker for up to 60 days before the date the application is filed. As a result of the Supreme Court's decision in *Cockle v. Dept. of Labor and Industries*, 142 Wn.2d 801 (2000), a

number of workers for whom L&I did not enter wage orders have applied to have their health and other benefits included in wage calculations claiming a change of circumstances.

A worker can apply to reopen a claim and request a readjustment of compensation, or the director on his or her own motion can reopen a claim and readjust the worker's compensation, if the disability upon which the claim was based is aggravated, lessened or terminated. If an order denying the application to reopen a claim, which application was filed on or after July 1, 1988, is not issued within 90 days after the self-insurer or L&I receives the application, the application is deemed granted. For good cause, L&I may extend the time for making the final determination for up to 60 days.

Summary of Bill: A worker who is injured as a result of an accident that occurred on the job must report the accident to his or her employer, superintendent or supervisor within five working days after the accident. If the worker does not timely report the accident, the employer does not have to report the accident and injury to L&I.

If a physician notifies a worker that the worker suffers from an occupational disease, the worker must report the existence of the disease to his or her employer, superintendent or supervisor within five working days after receiving notification. The requirement that the physician provide the worker with written notice of the existence of the disease is removed, as is the requirement that L&I send a copy of the notification to the worker and the self-insurer.

The provision allowing for compensation changes as a result of a change of circumstances is removed.

For applications to reopen claims which are filed after July 1, 1988 but before the effective date of this act, the good cause extension is removed. For applications to reopen claims filed on or after the effective date of this act, the self-insurer or L&I must send the worker notice that the application has been received and if the order denying or granting the application is not issued within 90 days of mailing the notice to the worker, the application will be deemed granted. The good cause exception applies to applications filed after the effective date of the act.

L&I must monitor the number of cases in which the five-day rule has not been met, determine the reasons the rule has not been met and report annually to the Legislature starting December 15, 2004.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is the most important issue in the agricultural industry. If employees do not report an injury for a long time, then the employer is unaware of it and is unable to fix the problem.

Testimony Against: It is unreasonable to deny time loss payments for late notice. The requirement that a doctor file a written report in an occupational disease matter should remain. Striking the "change in circumstances" provision is unfair to workers.

Testified: PRO: Dan Fazio, Farm Bureau; CON: Wayne Lieb, WSTLA; Robby Stern, WSLC; Dave Johnson, WSBCTC; Owen Linch, Teamsters.