
SENATE BILL 5323

State of Washington

58th Legislature

2003 Regular Session

By Senator Honeyford; by request of Department of Labor & Industries

Read first time 01/22/2003. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to calculating the amount of total disability and
2 death benefits under Title 51 RCW; amending RCW 51.08.178, 51.28.040,
3 51.32.050, and 51.32.060; and reenacting and amending RCW 51.32.090.

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

5 **Sec. 1.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read
6 as follows:

7 (1) For the purposes of this title, the monthly wages the worker
8 was receiving from all employment at the time of injury shall be the
9 basis upon which compensation is computed unless otherwise provided
10 specifically in the statute concerned.

11 (2)(a) The term "wages" shall include:

12 (i) The gross cash wages paid by the employer for services
13 performed. "Cash wages" means payment in cash, by check, by electronic
14 transfer or by other means made directly to the worker before any
15 mandatory deductions required by state or federal law.

16 (ii) Tips to the extent that they are reported to the employer for
17 federal income tax purposes.

18 (iii) The average monthly value of any bonus received from the

1 employer in the twelve months immediately preceding the worker's injury
2 or occupational disease.

3 (iv) The reasonable value of board, housing, and fuel received from
4 the employer as part of the contract of hire. This subsection
5 (2)(a)(iv) shall not apply during any period in which the employer
6 continues to provide the worker with the same level of board, housing,
7 and fuel that was provided at the time of injury or disease
8 manifestation.

9 (b) The term "wages" does not include fringe benefits. "Fringe
10 benefits" includes, but is not limited to, employer payments for, or
11 contributions to a retirement or pension plan, life insurance,
12 training, long-term disability, social security, profit sharing, stock
13 option, savings account plan, or other employee or beneficiary benefit
14 plan.

15 (c) Medical, dental, and vision benefits provided by the employer
16 of injury to a worker shall be included as wages under subsection (3)
17 of this section. The amount and value of these wages is fixed as of
18 the date the worker applies for benefits under this title. For claims
19 filed on or after the effective date of this act, the value of these
20 wages is fixed at three hundred seventy-three dollars per month.

21 (i) The fixed value of the medical, dental, and vision benefits
22 under this subsection (2)(c) shall be adjusted annually on July 1st to
23 reflect changes in the prior calendar year average of the medical
24 portion of the national consumer price index for all urban consumers.
25 This adjusted figure shall only be used to determine the value of these
26 benefits for new claims filed by workers.

27 (ii) The amount and value of medical, vision, and dental insurance
28 under this subsection shall not be added to the worker's wages for any
29 period in which the worker continues to receive the same level of
30 medical, vision, and dental insurance that were provided to the worker
31 at the time of the injury or disease manifestation from any past or
32 current employment with any employer.

33 (3) Except as provided in subsection (4) of this section, in cases
34 where the worker's wages are not fixed by the month, they shall be
35 determined by multiplying the daily wage the worker was receiving at
36 the time of the injury:

37 (a) By five, if the worker was normally employed one day a week;

38 (b) By nine, if the worker was normally employed two days a week;

1 (c) By thirteen, if the worker was normally employed three days a
2 week;

3 (d) By eighteen, if the worker was normally employed four days a
4 week;

5 (e) By twenty-two, if the worker was normally employed five days a
6 week;

7 (f) By twenty-six, if the worker was normally employed six days a
8 week;

9 (g) By thirty, if the worker was normally employed seven days a
10 week.

11 (~~The term "wages" shall include the reasonable value of board,~~
12 ~~housing, fuel, or other consideration of like nature received from the~~
13 ~~employer as part of the contract of hire, but shall not include~~
14 ~~overtime pay except in cases under subsection (2) of this section.~~
15 ~~However, tips shall also be considered wages only to the extent such~~
16 ~~tips are reported to the employer for federal income tax purposes.))
17 The daily wage shall be the hourly wage multiplied by the number of
18 hours the worker is normally employed. The number of days and hours
19 the worker is normally employed shall be determined by the department
20 in a fair and reasonable manner, which may include averaging the number
21 of days worked per week and hours worked per day.~~

22 (~~(2) In cases where (a) the worker's employment is exclusively~~
23 ~~seasonal in nature or (b) the worker's current employment or his or her~~
24 ~~relation to his or her employment is essentially part time or~~
25 ~~intermittent, the)) (4)(a) The worker's monthly wages shall be
26 calculated under this subsection if both of the following elements are
27 met:~~

28 (i) The worker was engaged in temporary employment at the time of
29 injury or disease manifestation. "Temporary employment" refers to the
30 employment relationship with the employer of injury that was reasonably
31 expected to end upon completion of a specific job or on a specific
32 date; and

33 (ii) The worker was employed less than one hundred ninety-five
34 working days in the twelve months immediately preceding the injury or
35 disease manifestation.

36 (b) For the purposes of this subsection, the worker's monthly wage
37 shall be determined by dividing by twelve the total wages earned,

1 including overtime, from all employment in the highest of any twelve
2 successive calendar months in the three years preceding the injury
3 (~~which fairly represent the claimant's employment pattern.~~

4 ~~(3) If, within the twelve months immediately preceding the injury,~~
5 ~~the worker has received from the employer at the time of injury a bonus~~
6 ~~as part of the contract of hire, the average monthly value of such~~
7 ~~bonus shall be included in determining the worker's monthly wages)) or~~
8 ~~disease.~~

9 ((~~4~~)) (5) In cases where a wage has not been fixed or cannot be
10 reasonably and fairly determined, the monthly wage shall be computed on
11 the basis of the usual wage paid other employees engaged in like or
12 similar occupations where the wages are fixed.

13 (6) The department may adopt rules to implement this section.

14 **Sec. 2.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended to
15 read as follows:

16 (~~If change of circumstances warrants an increase or rearrangement~~
17 ~~of compensation, like application shall be made therefor.)) Where the
18 worker's application to reopen a claim has been granted under RCW
19 51.32.160, compensation and other benefits, if in order, shall be
20 allowed for periods of time up to sixty days prior to the receipt of
21 such application.~~

22 **Sec. 3.** RCW 51.32.050 and 1995 c 199 s 6 are each amended to read
23 as follows:

24 (1) Where death results from the injury the expenses of burial not
25 to exceed two hundred percent of the average monthly wage in the state
26 as defined in RCW 51.08.018 shall be paid.

27 (2)(a) Where death results from the injury, a surviving spouse of
28 a deceased worker eligible for benefits under this title shall receive
29 monthly for life or until remarriage payments according to the
30 following schedule:

31 (i) If there are no children of the deceased worker, sixty percent
32 of the wages of the deceased worker but not less than one hundred
33 eighty-five dollars;

34 (ii) If there is one child of the deceased worker and in the legal
35 custody of such spouse, sixty-two percent of the wages of the deceased
36 worker but not less than two hundred twenty-two dollars;

1 (iii) If there are two children of the deceased worker and in the
2 legal custody of such spouse, sixty-four percent of the wages of the
3 deceased worker but not less than two hundred fifty-three dollars;

4 (iv) If there are three children of the deceased worker and in the
5 legal custody of such spouse, sixty-six percent of the wages of the
6 deceased worker but not less than two hundred seventy-six dollars;

7 (v) If there are four children of the deceased worker and in the
8 legal custody of such spouse, sixty-eight percent of the wages of the
9 deceased worker but not less than two hundred ninety-nine dollars; or

10 (vi) If there are five or more children of the deceased worker and
11 in the legal custody of such spouse, seventy percent of the wages of
12 the deceased worker but not less than three hundred twenty-two dollars.

13 (b) For claims filed on or after July 1, 2004, the minimum amount
14 paid under (a) of this subsection is three hundred fifty-two dollars.

15 (c) Where the surviving spouse does not have legal custody of any
16 child or children of the deceased worker or where after the death of
17 the worker legal custody of such child or children passes from such
18 surviving spouse to another, any payment on account of such child or
19 children not in the legal custody of the surviving spouse shall be made
20 to the person or persons having legal custody of such child or
21 children. The amount of such payments shall be five percent of the
22 monthly benefits payable as a result of the worker's death for each
23 such child but such payments shall not exceed twenty-five percent.
24 Such payments on account of such child or children shall be subtracted
25 from the amount to which such surviving spouse would have been entitled
26 had such surviving spouse had legal custody of all of the children and
27 the surviving spouse shall receive the remainder after such payments on
28 account of such child or children have been subtracted. Such payments
29 on account of a child or children not in the legal custody of such
30 surviving spouse shall be apportioned equally among such children.

31 ((+e)) (d) Payments to the surviving spouse of the deceased worker
32 shall cease at the end of the month in which remarriage occurs:
33 PROVIDED, That a monthly payment shall be made to the child or children
34 of the deceased worker from the month following such remarriage in a
35 sum equal to five percent of the wages of the deceased worker for one
36 child and a sum equal to five percent for each additional child up to
37 a maximum of five such children. Payments to such child or children
38 shall be apportioned equally among such children. Such sum shall be in

1 place of any payments theretofore made for the benefit of or on account
2 of any such child or children. If the surviving spouse does not have
3 legal custody of any child or children of the deceased worker, or if
4 after the death of the worker, legal custody of such child or children
5 passes from such surviving spouse to another, any payment on account of
6 such child or children not in the legal custody of the surviving spouse
7 shall be made to the person or persons having legal custody of such
8 child or children.

9 ~~((d))~~ (e) In no event shall the monthly payments provided in
10 subsection (2) of this section exceed the applicable percentage of the
11 average monthly wage in the state as computed under RCW 51.08.018 as
12 follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

13
14
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16
17
18 ~~((e))~~ (f) In addition to the monthly payments provided for in
19 subsection (2)(a) through ~~((e))~~ (d) of this section, a surviving
20 spouse or child or children of such worker if there is no surviving
21 spouse, or dependent parent or parents, if there is no surviving spouse
22 or child or children of any such deceased worker shall be forthwith
23 paid a sum equal to one hundred percent of the average monthly wage in
24 the state as defined in RCW 51.08.018, any such children, or parents to
25 share and share alike in said sum.

26 ~~((f))~~ (g) Upon remarriage of a surviving spouse the monthly
27 payments for the child or children shall continue as provided in this
28 section, but the monthly payments to such surviving spouse shall cease
29 at the end of the month during which remarriage occurs. However, after
30 September 8, 1975, an otherwise eligible surviving spouse of a worker
31 who died at any time prior to or after September 8, 1975, shall have an
32 option of:

33 (i) Receiving, once and for all, a lump sum of twenty-four times
34 the monthly compensation rate in effect on the date of remarriage
35 allocable to the spouse for himself or herself pursuant to subsection
36 (2)(a)(i) of this section and subject to any modifications specified

1 under subsection (2)(~~(d)~~) (e) of this section and RCW 51.32.075(3) or
2 fifty percent of the then remaining annuity value of his or her
3 pension, whichever is the lesser: PROVIDED, That if the injury
4 occurred prior to July 28, 1991, the remarriage benefit lump sum
5 available shall be as provided in the remarriage benefit schedules then
6 in effect; or

7 (ii) If a surviving spouse does not choose the option specified in
8 subsection (2)(~~(f)~~~~(i)~~) (g)(i) of this section to accept the lump sum
9 payment, the remarriage of the surviving spouse of a worker shall not
10 bar him or her from claiming the lump sum payment authorized in
11 subsection (2)(~~(f)~~~~(i)~~) (g)(i) of this section during the life of the
12 remarriage, or shall not prevent subsequent monthly payments to him or
13 to her if the remarriage has been terminated by death or has been
14 dissolved or annulled by valid court decree provided he or she has not
15 previously accepted the lump sum payment.

16 (~~(g)~~) (h) If the surviving spouse during the remarriage should
17 die without having previously received the lump sum payment provided in
18 subsection (2)(~~(f)~~~~(i)~~) (g)(i) of this section, his or her estate
19 shall be entitled to receive the sum specified under subsection
20 (2)(~~(f)~~~~(i)~~) (g)(i) of this section or fifty percent of the then
21 remaining annuity value of his or her pension whichever is the lesser.

22 (~~(h)~~) (i) The effective date of resumption of payments under
23 subsection (2)(~~(f)~~~~(ii)~~) (g)(ii) of this section to a surviving spouse
24 based upon termination of a remarriage by death, annulment, or
25 dissolution shall be the date of the death or the date the judicial
26 decree of annulment or dissolution becomes final and when application
27 for the payments has been received.

28 (~~(i)~~) (j) If it should be necessary to increase the reserves in
29 the reserve fund or to create a new pension reserve fund as a result of
30 the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the
31 amount of such increase in pension reserve in any such case shall be
32 transferred to the reserve fund from the supplemental pension fund.

33 (3) If there is a child or children and no surviving spouse of the
34 deceased worker or the surviving spouse is not eligible for benefits
35 under this title, a sum equal to thirty-five percent of the wages of
36 the deceased worker shall be paid monthly for one child and a sum
37 equivalent to fifteen percent of such wage shall be paid monthly for
38 each additional child, the total of such sum to be divided among such

1 children, share and share alike: PROVIDED, That benefits under this
2 subsection or subsection (4) of this section shall not exceed the
3 lesser of sixty-five percent of the wages of the deceased worker at the
4 time of his or her death or the applicable percentage of the average
5 monthly wage in the state as defined in RCW 51.08.018, as follows:

6	AFTER	PERCENTAGE
7	June 30, 1993	105%
8	June 30, 1994	110%
9	June 30, 1995	115%
10	June 30, 1996	120%

11 (4) In the event a surviving spouse receiving monthly payments
12 dies, the child or children of the deceased worker shall receive the
13 same payment as provided in subsection (3) of this section.

14 (5) If the worker leaves no surviving spouse or child, but leaves
15 a dependent or dependents, a monthly payment shall be made to each
16 dependent equal to fifty percent of the average monthly support
17 actually received by such dependent from the worker during the twelve
18 months next preceding the occurrence of the injury, but the total
19 payment to all dependents in any case shall not exceed the lesser of
20 sixty-five percent of the wages of the deceased worker at the time of
21 his or her death or the applicable percentage of the average monthly
22 wage in the state as defined in RCW 51.08.018 as follows:

23	AFTER	PERCENTAGE
24	June 30, 1993	105%
25	June 30, 1994	110%
26	June 30, 1995	115%
27	June 30, 1996	120%

28 If any dependent is under the age of eighteen years at the time of the
29 occurrence of the injury, the payment to such dependent shall cease
30 when such dependent reaches the age of eighteen years except such
31 payments shall continue until the dependent reaches age twenty-three
32 while permanently enrolled at a full time course in an accredited
33 school. The payment to any dependent shall cease if and when, under

1 the same circumstances, the necessity creating the dependency would
2 have ceased if the injury had not happened.

3 (6) For claims filed prior to July 1, 1986, if the injured worker
4 dies during the period of permanent total disability, whatever the
5 cause of death, leaving a surviving spouse, or child, or children, the
6 surviving spouse or child or children shall receive benefits as if
7 death resulted from the injury as provided in subsections (2) through
8 (4) of this section. Upon remarriage or death of such surviving
9 spouse, the payments to such child or children shall be made as
10 provided in subsection (2) of this section when the surviving spouse of
11 a deceased worker remarries.

12 (7) For claims filed on or after July 1, 1986, every worker who
13 becomes eligible for permanent total disability benefits shall elect an
14 option as provided in RCW 51.32.067.

15 **Sec. 4.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read
16 as follows:

17 (1) Except as provided in subsection (2) of this section, when the
18 supervisor of industrial insurance shall determine that permanent total
19 disability results from the injury, the worker shall receive monthly
20 during the period of such disability:

21 (a) If married at the time of injury, sixty-five percent of his or
22 her wages but not less than two hundred fifteen dollars per month.

23 (b) If married with one child at the time of injury, sixty-seven
24 percent of his or her wages but not less than two hundred fifty-two
25 dollars per month.

26 (c) If married with two children at the time of injury, sixty-nine
27 percent of his or her wages but not less than two hundred eighty-three
28 dollars.

29 (d) If married with three children at the time of injury,
30 seventy-one percent of his or her wages but not less than three hundred
31 six dollars per month.

32 (e) If married with four children at the time of injury,
33 seventy-three percent of his or her wages but not less than three
34 hundred twenty-nine dollars per month.

35 (f) If married with five or more children at the time of injury,
36 seventy-five percent of his or her wages but not less than three
37 hundred fifty-two dollars per month.

1 (g) If unmarried at the time of the injury, sixty percent of his or
2 her wages but not less than one hundred eighty-five dollars per month.

3 (h) If unmarried with one child at the time of injury, sixty-two
4 percent of his or her wages but not less than two hundred twenty-two
5 dollars per month.

6 (i) If unmarried with two children at the time of injury,
7 sixty-four percent of his or her wages but not less than two hundred
8 fifty-three dollars per month.

9 (j) If unmarried with three children at the time of injury,
10 sixty-six percent of his or her wages but not less than two hundred
11 seventy-six dollars per month.

12 (k) If unmarried with four children at the time of injury,
13 sixty-eight percent of his or her wages but not less than two hundred
14 ninety-nine dollars per month.

15 (l) If unmarried with five or more children at the time of injury,
16 seventy percent of his or her wages but not less than three hundred
17 twenty-two dollars per month.

18 (2) For any claim filed on or after July 1, 2004, when the
19 supervisor of industrial insurance determines that permanent total
20 disability results from the injury, the worker shall receive monthly
21 during the period of such disability sixty-seven percent of his or her
22 wages at the time of injury, but not less than three hundred fifty-two
23 dollars per month.

24 (3) For any period of time where both husband and wife are entitled
25 to compensation as temporarily or totally disabled workers, only that
26 spouse having the higher wages of the two shall be entitled to claim
27 their child or children for compensation purposes.

28 ((+3)) (4) In case of permanent total disability, if the character
29 of the injury is such as to render the worker so physically helpless as
30 to require the hiring of the services of an attendant, the department
31 shall make monthly payments to such attendant for such services as long
32 as such requirement continues, but such payments shall not obtain or be
33 operative while the worker is receiving care under or pursuant to the
34 provisions of chapter 51.36 RCW and RCW 51.04.105.

35 ((+4)) (5) Should any further accident result in the permanent
36 total disability of an injured worker, he or she shall receive the
37 pension to which he or she would be entitled, notwithstanding the
38 payment of a lump sum for his or her prior injury.

1 ~~((+5))~~ (6) In no event shall the monthly payments provided in this
2 section exceed the applicable percentage of the average monthly wage in
3 the state as computed under the provisions of RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
4		
5	June 30, 1993	105%
6	June 30, 1994	110%
7	June 30, 1995	115%
8	June 30, 1996	120%

9 The limitations under this subsection shall not apply to the
10 payments provided for in subsection (3) of this section.

11 ~~((+6))~~ (7) In the case of new or reopened claims, if the
12 supervisor of industrial insurance determines that, at the time of
13 filing or reopening, the worker is voluntarily retired and is no longer
14 attached to the work force, benefits shall not be paid under this
15 section.

16 ~~((+7))~~ (8) The benefits provided by this section are subject to
17 modification under RCW 51.32.067.

18 (9) The department may adopt rules to implement this section.

19 **Sec. 5.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
20 c 271 s 1 are each reenacted and amended to read as follows:

21 (1) When the total disability is only temporary, the schedule of
22 payments contained in RCW 51.32.060 (1) ~~((and (2)))~~ through (3) shall
23 apply, so long as the total disability continues.

24 (2) Any compensation payable under this section for children not in
25 the custody of the injured worker as of the date of injury shall be
26 payable only to such person as actually is providing the support for
27 such child or children pursuant to the order of a court of record
28 providing for support of such child or children. This subsection does
29 not apply to any claim filed on or after July 1, 2004.

30 (3)(a) As soon as recovery is so complete that the present earning
31 power of the worker, at any kind of work, is restored to that existing
32 at the time of the occurrence of the injury, the payments shall cease.
33 If and so long as the present earning power is only partially restored,
34 the payments shall:

1 (i) For claims for injuries that occurred before May 7, 1993,
2 continue in the proportion which the new earning power shall bear to
3 the old; or

4 (ii) For claims for injuries occurring on or after May 7, 1993,
5 equal eighty percent of the actual difference between the worker's
6 present wages and earning power at the time of injury, but: (A) The
7 total of these payments and the worker's present wages may not exceed
8 one hundred fifty percent of the average monthly wage in the state as
9 computed under RCW 51.08.018; (B) the payments may not exceed one
10 hundred percent of the entitlement as computed under subsection (1) of
11 this section; and (C) the payments may not be less than the worker
12 would have received if (a)(i) of this subsection had been applicable to
13 the worker's claim.

14 (b) No compensation shall be payable under this subsection (3)
15 unless the loss of earning power shall exceed five percent.

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

36 (b) Once the worker returns to work under the terms of this
37 subsection (4), he or she shall not be assigned by the employer to work

1 other than the available work described without the worker's written
2 consent, or without prior review and approval by the worker's
3 physician.

4 (c) If the worker returns to work under this subsection (4), any
5 employee health and welfare benefits that the worker was receiving at
6 the time of injury shall continue or be resumed at the level provided
7 at the time of injury. Such benefits shall not be continued or resumed
8 if to do so is inconsistent with the terms of the benefit program, or
9 with the terms of the collective bargaining agreement currently in
10 force.

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

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

21 (6) Should a worker suffer a temporary total disability and should
22 his or her employer at the time of the injury continue to pay him or
23 her the wages which he or she was earning at the time of such injury,
24 such injured worker shall not receive any payment provided in
25 subsection (1) or (2) of this section during the period his or her
26 employer shall so pay such wages.

27 (7) In no event shall the monthly payments provided in this section
28 exceed the applicable percentage of the average monthly wage in the
29 state as computed under the provisions of RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
30		
31	June 30, 1993	105%
32	June 30, 1994	110%
33	June 30, 1995	115%
34	June 30, 1996	120%

35 (8) If the supervisor of industrial insurance determines that the

1 worker is voluntarily retired and is no longer attached to the work
2 force, benefits shall not be paid under this section.

3 (9) The department may adopt rules to implement this section.

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