

ESB 5566 - H AMD 662

By Representative Eddy

NOT CONSIDERED 04/22/2011

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.04
5 RCW to read as follows:

6 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of
7 this title, beginning January 1, 2012, the parties to an allowed claim
8 for benefits may enter into a voluntary settlement agreement as
9 provided in this section with respect to one or more allowed claims
10 for benefits under this title. No voluntary settlement agreement may
11 be entered into by a worker who has received a permanent total
12 disability award and the award is final and binding. All voluntary
13 settlement agreements must be approved by the board of industrial
14 insurance appeals. The voluntary settlement agreement may:

15 (i) Bind the parties with regard to any or all aspects of an
16 allowed claim including, but not limited to, monetary payment,
17 vocational services, and claim closure, but excluding medical
18 benefits;

19 (ii) Include a structured settlement in which payments are made
20 pursuant to a payment schedule;

21 (iii) Not subject any employer who is not a signatory to the
22 agreement to any responsibility or burden under any claim; and

23 (iv) Not be submitted to the board under subsection (2) or (3) of
24 this section within one hundred eighty days of the date the claim is
25 allowed.

26 (b) For purposes of this section:

27 (i) "Parties" means:

1 (A) For a self-insured claim, the worker and the employer; and

2 (B) For a state fund claim, the worker, the employer, and the
3 department. However, a "party" for a state fund claim does not
4 include an employer whose experience rating would not be affected by a
5 voluntary settlement agreement or an employer whose account with the
6 department is closed or inactive.

7 (ii) "Allowed claim" means a claim for which the determination
8 that the claim is allowed is final and binding.

9 (c) For state fund claims, the department shall negotiate the
10 settlement with the worker. Any voluntary settlement agreement
11 entered into under this section must be signed by the parties or their
12 representatives and must clearly state that the parties understand and
13 agree to the terms of the voluntary settlement agreement. Unless one
14 of the parties revokes consent to the agreement, as provided in
15 subsection (5) of this section, the voluntary settlement agreement
16 becomes final and binding thirty days after approval of the agreement
17 by the board of industrial insurance appeals.

18 (d) A voluntary settlement agreement that has become final and
19 binding as provided in this section is binding on the department and
20 on all parties to the agreement as to its terms and the injuries and
21 occupational diseases to which the voluntary settlement applies. A
22 voluntary settlement agreement that has become final and binding is
23 not subject to appeal.

24 (2)(a) If a worker is not represented by an attorney at the time
25 of signing a voluntary settlement agreement, the parties must forward
26 a copy of the signed settlement agreement to the board with a request
27 for a hearing before an industrial appeals judge. The hearing must be
28 open, under oath, and on the record. Unless one of the parties
29 requests a later date, the industrial appeals judge must convene the
30 hearing within fourteen days after receipt of the request for the
31 limited purpose of receiving the voluntary settlement agreement of the
32 parties, explaining to the worker the benefits generally available
33 under this title, and explaining that a voluntary settlement agreement
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1 may alter the benefits payable on a claim. In no event may an
2 industrial appeals judge render legal advice to any party.

3 (b) Before recommending approval of the voluntary settlement
4 agreement, the industrial appeals judge must find that the worker has
5 an adequate understanding of the settlement proposal and its
6 consequences to the worker.

7 (c)(i) The industrial appeals judge may recommend approval of a
8 settlement agreement only if the judge finds that the settlement is in
9 the best interest of the worker. When determining whether the
10 settlement is in the best interest of the worker, the industrial
11 appeals judge shall consider the following factors, taken as a whole,
12 with no individual factor being determinative:

13 (A) The nature and extent of the injuries and disabilities of the
14 worker;

15 (B) The age and life expectancy of the injured worker;

16 (C) Whether the injured worker has any health, disability, or
17 related insurance;

18 (D) Any other benefits the injured worker is receiving or is
19 entitled to receive and the effect a settlement agreement might have
20 on those benefits;

21 (E) The marital status of the injured worker; and

22 (F) The number of dependents of the injured worker.

23 (ii) At the conclusion of the hearing, the industrial appeals
24 judge must make a decision whether to recommend that the board approve
25 or reject the voluntary settlement agreement. The industrial appeals
26 judge may continue the hearing for up to seven days.

27 (d) If the industrial appeals judge recommends the voluntary
28 settlement agreement be approved, the recommendation must be submitted
29 to the board for final approval.

30 (3) If a worker is represented by an attorney at the time of
31 signing a voluntary settlement agreement, the parties may submit the
32 agreement directly to the board without the hearing described in this
33 section.

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1 (4) Upon receiving the voluntary settlement agreement, the board
2 shall approve the agreement within thirty working days of receipt
3 unless it finds that the parties have not entered into the agreement
4 knowingly and willingly. If the board approves the agreement, it
5 shall provide notice to the department of the binding terms of the
6 agreement and provide for placement of the agreement in the applicable
7 claim files.

8 (5) A party may revoke consent to the voluntary settlement
9 agreement by providing written notice to the other parties and the
10 board within thirty days after the date the agreement is approved by
11 the board.

12 (6) To the extent the worker is found to be entitled to benefits
13 while a voluntary settlement agreement is being negotiated, or during
14 the revocation period of an agreement, the benefits must continue
15 until the agreement becomes final.

16 (7) Existing law as set forth in RCW 51.52.120 and the principles
17 and factors therein apply to attorney fees, including the limits on
18 fees, for an attorney representing a worker who enters a voluntary
19 settlement agreement.

20 (8) The board of industrial insurance appeals shall adopt rules to
21 implement this section.

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23 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.04 RCW
24 to read as follows:

25 The department must maintain copies of all voluntary settlement
26 agreements entered into between the parties under section 1 of this
27 act and develop processes under RCW 51.28.070 to furnish copies of
28 such agreements to any party contemplating any subsequent voluntary
29 settlement agreement with the worker on any claim. The department
30 shall also furnish claims histories that include all prior permanent
31 disability awards received by the worker on any claims by body part
32 and category or percentage rating, as applicable. Copies of such
33 agreements and claims histories shall be furnished within ten working
34 days of a written request. An employer may not consider a prior

1 settlement agreement or claims history when making a decision about
2 hiring or the terms or conditions of employment.

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4 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.04 RCW
5 to read as follows:

6 If a worker has received a prior award of, or entered into a
7 voluntary settlement for, total or partial permanent disability
8 benefits, it shall be conclusively presumed that the medical condition
9 causing the prior permanent disability exists and is disabling at the
10 time of any subsequent industrial injury or occupational disease.
11 Except in the case of total permanent disability, the accumulation of
12 all permanent disability awards issued with respect to any one part of
13 the body in favor of the worker may not exceed one hundred percent
14 over the worker's lifetime. When entering into a voluntary settlement
15 agreement under this chapter, the department or self-insured employer
16 may exclude amounts paid to settle claims for prior portions of a
17 worker's permanent total or partial disability.

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19 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.04 RCW
20 to read as follows:

21 The joint legislative audit and review committee shall contract
22 for an independent study of voluntary settlement agreements approved
23 by the board of industrial insurance appeals under section 1 of this
24 act. The study must be performed by a researcher that has experience
25 in workers' compensation systems. The study must evaluate settlement
26 agreements of state fund and self-insured claims, provide information
27 on the impact of settlement agreements to the state fund and to self-
28 insured employers, and evaluate the outcomes of workers who have
29 settled their claims. The joint legislative audit and review
30 committee shall analyze the study and make recommendations to the
31 appropriate committees of the legislature by November 1, 2015,
32 regarding voluntary settlement agreements. In implementing this
33 section, the joint legislative audit and review committee shall seek
34 input from the department of labor and industries, the board of

1 industrial insurance appeals, and the workers' compensation advisory
2 committee.

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4 **Sec. 5.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
5 each reenacted and amended to read 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
8 as the total disability continues.

9 (2) Any compensation payable under this section for children not
10 in 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)(a) 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
16 at the time of the occurrence of the injury, the payments shall cease.
17 If and so long as the present earning power is only partially
18 restored, the payments shall:

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

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

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

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1 (c) The prior closure of the claim or the receipt of permanent
2 partial disability benefits shall not affect the rate at which loss of
3 earning power benefits are calculated upon reopening the claim.

4 (4)(a) (~~Whenever~~) The legislature finds that long-term
5 disability and the cost of injuries is significantly reduced when
6 injured workers remain at work following their injury. To encourage
7 employers at the time of injury to provide light duty or transitional
8 work for their workers, wage subsidies and other incentives are made
9 available to employers insured with the department.

10 (b) The employer of injury (~~requests that~~) may provide light
11 duty or transitional work to a worker who is entitled to temporary
12 total disability under this chapter (~~be certified by a physician or~~
13 licensed advanced registered nurse practitioner as able to perform
14 available work other than his or her usual work,). The employer or
15 the department shall obtain from the physician or licensed advanced
16 registered nurse practitioner a statement confirming the light duty or
17 transitional work is consistent with the worker's medical restrictions
18 related to the injury. This statement should be obtained before the
19 start of the light duty or transitional work unless the worker has
20 already returned to work with the employer of injury in which case the
21 statement may be obtained following the start date of the job. The
22 employer shall furnish to the physician or licensed advanced
23 registered nurse practitioner, with a copy to the worker, a statement
24 describing the work (~~available~~) with the employer of injury in terms
25 that will enable the physician or licensed advanced registered nurse
26 practitioner to relate the physical activities of the job to the
27 worker's disability. The physician or licensed advanced registered
28 nurse practitioner shall (~~then determine~~) confirm whether the worker
29 is physically able to perform the work described. The worker's
30 temporary total disability payments shall (~~continue until the worker~~
31 is released by his or her physician or licensed advanced registered
32 nurse practitioner for the work, and begins the work with the employer
33 of injury. If)) stop effective the date the light duty or
34 transitional job starts. Temporary total disability payments shall

1 resume if the work (~~((thereafter))~~) comes to an end before the worker's
2 recovery is sufficient in the judgment of his or her physician or
3 licensed advanced registered nurse practitioner to permit him or her
4 to return to his or her usual job, or to perform other available work
5 offered by the employer of injury(~~((, the worker's temporary total~~
6 ~~disability payments shall be resumed))~~). Should the available work
7 described, once undertaken by the worker, impede his or her recovery
8 to the extent that in the judgment of his or her physician or licensed
9 advanced registered nurse practitioner he or she should not continue
10 to work, the worker's temporary total disability payments shall be
11 resumed when the worker ceases such work at the direction of the
12 physician or licensed advanced registered nurse practitioner.

13 ~~((b))~~ (c) To further encourage employers to maintain the
14 employment of their injured workers, an employer insured with the
15 department and that offers work to a worker pursuant to this
16 subsection (4) shall be eligible for reimbursement of the injured
17 worker's wages for light duty or transitional work equal to fifty
18 percent of the basic, gross wages paid for that work, for a maximum of
19 sixty-six work days within a consecutive twenty-four month period. In
20 no event may the wage subsidies paid to an employer on a claim exceed
21 ten thousand dollars. Wage subsidies shall be calculated using the
22 worker's basic hourly wages or basic salary, and no subsidy shall be
23 paid for any other form of compensation or payment to the worker such
24 as tips, commissions, bonuses, board, housing, fuel, health care,
25 dental care, vision care, per diem, reimbursements for work-related
26 expenses, or any other payments. An employer may not, under any
27 circumstances, receive a wage subsidy for a day in which the worker
28 did not actually perform any work, regardless of whether or not the
29 employer paid the worker wages for that day.

30 (d) If an employer offers a worker work pursuant to this
31 subsection (4) and the worker must be provided with training or
32 instruction to be qualified to perform the offered work, the employer
33 shall be eligible for a reimbursement from the department for any
34 tuition, books, fees, and materials required for that training or

1 instruction, up to a maximum of one thousand dollars. Reimbursing an
2 employer for the costs of such training or instruction does not
3 constitute a determination by the department that the worker is
4 eligible for vocational services authorized by RCW 51.32.095 and
5 51.32.099.

6 (e) If an employer offers a worker work pursuant to this
7 subsection (4), and the employer provides the worker with clothing
8 that is necessary to allow the worker to perform the offered work, the
9 employer shall be eligible for reimbursement for such clothing from
10 the department, up to a maximum of four hundred dollars: PROVIDED,
11 HOWEVER, That an employer shall not receive reimbursement for any
12 clothing it provided to the worker that it normally provides to its
13 workers. The clothing purchased for the worker shall become the
14 worker's property once the work comes to an end.

15 (f) If an employer offers a worker work pursuant to this
16 subsection (4) and the worker must be provided with tools or equipment
17 to perform the offered work, the employer shall be eligible for a
18 reimbursement from the department for such tools and equipment and
19 related costs as determined by department rule, up to a maximum of two
20 thousand five hundred dollars. An employer shall not be reimbursed
21 for any tools or equipment purchased prior to offering the work to the
22 worker pursuant to this subsection (4). An employer shall not be
23 reimbursed for any tools or equipment that it normally provides to its
24 workers. The tools and equipment shall be the property of the
25 employer.

26 (g) An employer may offer work to a worker pursuant to this
27 subsection (4) more than once, but in no event may the employer
28 receive wage subsidies for more than sixty-six days of work in a
29 consecutive twenty-four month period under one claim. An employer may
30 continue to offer work pursuant to this subsection (4) after the
31 worker has performed sixty-six days of work, but the employer shall
32 not be eligible to receive wage subsidies for such work.

33 (h) An employer shall not receive any wage subsidies or
34 reimbursement of any expenses pursuant to this subsection (4) unless

1 the employer has completed and submitted the reimbursement request
2 onforms developed by the department, along with all related
3 information required by department rules. No wage subsidy or
4 reimbursement shall be paid to an employer who fails to submit a form
5 for such payment within one year of the date the work was performed.
6 In no event shall an employer receive wage subsidy payments or
7 reimbursements of any expenses pursuant to this subsection (4) unless
8 the worker's physician or licensed advanced registered nurse
9 practitioner has restricted him or her from performing his or her
10 usual work and the worker's physician or licensed advanced registered
11 nurse practitioner has released him or her to perform the work
12 offered.

13 (i) Payments made under (b) through (g) of this subsection are
14 subject to penalties under RCW 51.32.240(5) in cases where the funds
15 were obtained through willful misrepresentation.

16 (j) Once the worker returns to work under the terms of this
17 subsection (4), he or she shall not be assigned by the employer to
18 work other than the available work described without the ((worker's
19 written consent, or without prior review and)) approval ((by)) of the
20 worker's physician or licensed advanced registered nurse practitioner.
21 An employer who directs a claimant to perform work other than that
22 approved by the attending physician and without the approval of the
23 worker's physician or licensed advanced registered nurse practitioner
24 shall not receive any wage subsidy or other reimbursements for such
25 work.

26 ((+e)) (k) If the worker returns to work under this subsection
27 (4), any employee health and welfare benefits that the worker was
28 receiving at the time of injury shall continue or be resumed at the
29 level provided at the time of injury. Such benefits shall not be
30 continued or resumed if to do so is inconsistent with the terms of the
31 benefit program, or with the terms of the collective bargaining
32 agreement currently in force.

33 ((+d)) (l) In the event of any dispute as to the validity of the
34 work offered or as to the worker's ability to perform the available

1 work offered by the employer, the department shall make the final
2 determination pursuant to an order that contains the notice required
3 by RCW 51.52.060 and that is subject to appeal subject to RCW
4 51.52.050.

5 (5) An employer's experience rating shall not be affected by the
6 employer's request for or receipt of wage subsidies.

7 (6) The department shall create a Washington stay-at-work account
8 which shall be funded by assessments of employers insured through the
9 state fund for the costs of the payments authorized by subsection (4)
10 of this section and for the cost of creating a reserve for anticipated
11 liabilities. Employers may collect up to one-half the fund assessment
12 from workers.

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

21 (~~(+6)~~) (8) Should a worker suffer a temporary total disability
22 and should his or her employer at the time of the injury continue to
23 pay him or her the wages which he or she was earning at the time of
24 such injury, such injured worker shall not receive any payment
25 provided in subsection (1) of this section during the period his or
26 her employer shall so pay such wages(~~(:—PROVIDED, That)~~). However,
27 holiday pay, vacation pay, sick leave, or other similar benefits shall
28 not be deemed to be payments by the employer for the purposes of this
29 subsection.

30 (~~(+7)~~) (9) In no event shall the monthly payments provided in
31 this section:

32 (a) Exceed the applicable percentage of the average monthly wage
33 in the state as computed under the provisions of RCW 51.08.018 as
34 follows:

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

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (~~((7))~~) (9)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

~~((8))~~ (10) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

NEW SECTION. **Sec. 6.** The department of labor and industries shall contract for an independent study of the return to work provisions under RCW 51.32.090. The study must be performed by a researcher that has experience in workers' compensation systems. When selecting the independent researcher, the department shall consult with the workers' compensation advisory committee. The study must

1 evaluate the quality and effectiveness of the return to work program
2 and whether the program is being utilized by employers, and evaluate
3 the outcomes of workers participating in the program. The study must
4 be submitted to the appropriate committees of the legislature by
5 December 2016.

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7 NEW SECTION. **Sec. 7.** The department of labor and industries may
8 adopt rules to implement this act.

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10 NEW SECTION. **Sec. 8.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected."

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15 Correct the title.

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EFFECT: Makes the following changes to the Engrossed Senate
Bill with respect to voluntary settlement agreements (agreements):

- Prohibits agreements regarding medical benefits.
- Provides that a worker who has received a permanent total disability award that is final and binding may not enter an agreement.
- Provides that an agreement may include a structured settlement in which payments are made under a payment schedule.
- Changes the waiting period in which agreements may not be submitted to the Board of Industrial Insurance Appeals (Board) from 12 weeks after the date of injury or disease manifestation to 180 days after the claim is allowed.
- Modifies the procedure for review of agreements by unrepresented workers to provide that an industrial appeals judge (IAJ) reviews such agreements in an open, on the record, under oath hearing (instead of a conference with a settlement officer). Provides that the IAJ makes a recommendation to the Board, rather than issues an order. (Also deletes provision relating to appeal of the settlement officer's decision.) Provides that the IAJ makes a recommendation at the conclusion of the hearing but may continue the hearing for up to seven days. Requires the IAJ to "find" that the worker has an adequate understanding of

the agreement and its consequences (rather than "ensure").

- Provides that existing law and the principles and factors therein apply to attorney fees, including the limits on fees, for an attorney representing a worker who enters an agreement.
- Provides that a worker entitled to benefits continues to receive benefits (not limited to time loss or pension benefits, and not limited to benefits received as payments) while an agreement is being negotiated or during the revocation period.
- Allows agreements beginning January 1, 2012, rather than September 1, 2011.
- Gives the Board rule-making authority to implement the provisions.
- Provides that an employer is not a party to a State Fund agreement if the settlement would not affect the employer's experience rating or if the employer's account with the Department of Labor and Industries (Department) is closed or inactive.
- Defines an allowed claim as a claim for which the determination that the claim is allowed is final and binding.
- Modifies the study. Provides for the Joint Legislative Audit and Review Committee (JLARC) to contract for the study and requires JLARC to analyze the study and make recommendations to the appropriate committees of the legislature by November 1, 2015. (Eliminates studies in 2021 and 2026.) Removes reference to study of the quality and effectiveness of agreements. Requires JLARC to obtain input from the Department, Board, and the Workers' Compensation Advisory Committee.
- Corrects a cross-reference.

Also deletes the occupational disease study from the Engrossed Senate Bill.

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