

SB 5566 - S AMD 174

By Senators Holmquist Newbry, Kilmer

ADOPTED 03/05/2011

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

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

5 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of this
6 title, beginning September 1, 2011, the parties to an allowed claim for
7 benefits may enter into a voluntary settlement agreement as provided in
8 this section with respect to one or more allowed claims for benefits
9 under this title. All voluntary settlement agreements must be approved
10 by the board of industrial insurance appeals. The voluntary settlement
11 agreement may:

12 (i) Bind the parties with regard to any or all aspects of an
13 allowed claim including, but not limited to, monetary payment,
14 vocational services, and claim closure;

15 (ii) Not subject any employer who is not a signatory to the
16 agreement to any responsibility or burden under any claim; and

17 (iii) Not be submitted to the board under subsection (2) or (3) of
18 this section within twelve weeks of the date of injury or disease
19 manifestation.

20 (b) For purposes of this section, "parties" means:

21 (i) For a self-insured claim, the worker and the employer; and

22 (ii) For a state fund claim, the worker, the employer, and the
23 department.

24 (c) For state fund claims, the department shall negotiate the
25 settlement with the worker. Any voluntary settlement agreement entered
26 into under this section must be signed by the parties or their
27 representatives and must clearly state that the parties understand and
28 agree to the terms of the voluntary settlement agreement. Unless one
29 of the parties revokes consent to the agreement, as provided in

1 subsection (3) of this section, the voluntary settlement agreement
2 becomes final and binding thirty days after approval of the agreement
3 by the board of industrial insurance appeals.

4 (d) A voluntary settlement agreement that has become final and
5 binding as provided in this section is binding on the department and on
6 all parties to the agreement as to its terms and the injuries and
7 occupational diseases to which the voluntary settlement applies. A
8 voluntary settlement agreement that has become final and binding is not
9 subject to appeal.

10 (2)(a) If a worker is not represented by an attorney at the time of
11 signing a voluntary settlement agreement, the parties must forward a
12 copy of the signed settlement agreement to the board with a request for
13 a conference with a settlement officer. Unless one of the parties
14 requests a later date, the settlement officer must convene a conference
15 within fourteen days after receipt of the request for the limited
16 purpose of receiving the voluntary settlement agreement of the parties,
17 explaining to the worker the benefits generally available under this
18 title, and explaining that a voluntary settlement agreement may alter
19 the benefits payable on a claim. In no event may a settlement officer
20 render legal advice to any party.

21 (b) Before approving the settlement agreement, the settlement
22 officer shall ensure that the worker has an adequate understanding of
23 the settlement proposal and its consequences to the worker.

24 (c)(i) The settlement officer may approve a settlement agreement
25 only if the officer finds that the settlement is in the best interest
26 of the worker. When determining whether the settlement is in the best
27 interest of the worker, the settlement officer shall consider the
28 following factors, taken as a whole, with no individual factor being
29 determinative:

30 (A) The nature and extent of the injuries and disabilities of the
31 worker;

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

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

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

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

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

2 (ii) Within seven days after the conference, the settlement officer
3 shall issue an order allowing or rejecting the voluntary settlement
4 agreement. There is no appeal from the settlement officer's decision.

5 (d) If the settlement officer issues an order allowing the
6 voluntary settlement agreement, the order must be submitted to the
7 board.

8 (3) If a worker is represented by an attorney at the time of
9 signing a voluntary settlement agreement, the parties may submit the
10 agreement directly to the board without the conference described in
11 this section.

12 (4) Upon receiving the voluntary settlement agreement, the board
13 shall approve the agreement within thirty working days of receipt
14 unless it finds that the parties have not entered into the agreement
15 knowingly and willingly. If the board approves the agreement, it shall
16 provide notice to the department of the binding terms of the agreement
17 and provide for placement of the agreement in the applicable claim
18 files.

19 (5) A party may revoke consent to the voluntary settlement
20 agreement by providing written notice to the other parties and the
21 board within thirty days after the date the agreement is approved by
22 the board.

23 (6) To the extent the worker is found to be entitled to temporary
24 total disability or permanent total disability benefits while a
25 voluntary settlement agreement is being negotiated, or during the
26 revocation period of an agreement, the benefits must be paid until the
27 agreement becomes final.

28 (7) When future liability for medical benefits is released or
29 otherwise relinquished in a settlement agreement under this section,
30 any monetary compensation for medical benefits must be dispensed
31 pursuant to a schedule of payments as established in the settlement
32 agreement. The schedule of payments must be reasonably calculated to
33 provide the injured worker with periodic payments throughout the
34 expected time during which the worker will need medical treatment.

35 (8) A claim closed pursuant to a voluntary settlement agreement can
36 be reopened only upon a showing of worsening of the related medical
37 conditions under RCW 51.32.160 for medical treatment only. Further

1 temporary total, temporary partial, permanent partial, or permanent
2 total benefits are not payable under the same claim for which a
3 voluntary settlement has been approved by the board.

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

6 (1) In calendar years 2016, 2021, and 2026, the department shall
7 contract for an independent study of voluntary settlement agreements
8 approved by the board under this section. The study must be performed
9 by a researcher that has experience in workers' compensation systems.
10 When selecting the independent researcher, the department shall consult
11 with the workers' compensation advisory committee. The study must
12 evaluate the quality and effectiveness of settlement agreements of
13 state fund and self-insured claims, provide information on the impact
14 of settlement agreements to the state fund and to self-insured
15 employers, and evaluate the outcomes of workers who have settled their
16 claims. The study must be submitted to the appropriate committees of
17 the legislature.

18 (2) The department shall contract with an independent entity with
19 research experience in workers' compensation systems nationwide to
20 study the nature, incidence, and cost of occupational disease claims in
21 the Washington workers' compensation system. When selecting the
22 independent researcher the department shall consult with the workers'
23 compensation advisory committee. The study shall include, but not be
24 limited to, an examination of the frequency and severity of
25 occupational disease claims for state fund and self-insured employers,
26 both currently and with respect to historical trends; the impact of
27 occupational disease claims on long-term disability and pension trends;
28 consideration of the statutory definition of occupational disease, and
29 interpretation of it by courts, the board, and the department, how it
30 compares to definitions in other states' systems and whether as applied
31 it clearly delineates conditions caused by occupational exposures and
32 those caused by nonoccupational exposures; consideration of the statute
33 of limitation for filing occupational disease claims, and its
34 interpretation by courts, and whether as applied it functions as an
35 appropriate limitation on the filing of state claims; issues related to
36 the apportionment of occupational diseases between workers and

1 employers; and a comparison of other states and their definitions of
2 occupational disease. The study must be submitted to the appropriate
3 committees of the legislature by September 1, 2012.

4 (3) The department shall contract for an independent study of the
5 return to work provisions under RCW 51.32.090. The study must be
6 performed by a researcher that has experience in workers' compensation
7 systems. When selecting the independent researcher, the department
8 shall consult with the workers' compensation advisory committee. The
9 study must evaluate the quality and effectiveness of the return to work
10 program and whether the program is being utilized by employers, and
11 evaluate the outcomes of workers participating in the program. The
12 study must be submitted to the appropriate committees of the
13 legislature by December 2016.

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

16 The department must maintain copies of all voluntary settlement
17 agreements entered into between the parties and develop processes under
18 RCW 51.28.070 to furnish copies of such agreements to any party
19 contemplating any subsequent voluntary settlement agreement with the
20 worker on any claim. The department shall also furnish claims
21 histories that include all prior permanent disability awards received
22 by the worker on any claims by body part and category or percentage
23 rating, as applicable. Copies of such agreements and claims histories
24 shall be furnished within ten working days of a written request. An
25 employer may not consider a prior settlement agreement or claims
26 history when making a decision about hiring or the terms or conditions
27 of employment.

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

30 If a worker has received a prior award of, or entered into a
31 voluntary settlement for, total or partial permanent disability
32 benefits, it shall be conclusively presumed that the medical condition
33 causing the prior permanent disability exists and is disabling at the
34 time of any subsequent industrial injury or occupational disease.
35 Except in the case of total permanent disability, the accumulation of
36 all permanent disability awards issued with respect to any one part of

1 the body in favor of the worker may not exceed one hundred percent over
2 the worker's lifetime. When entering into a voluntary settlement
3 agreement under this chapter, the department or self-insured employer
4 may exclude amounts paid to settle claims for prior portions of a
5 worker's permanent total or partial disability.

6 **Sec. 5.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
7 each reenacted and amended to read as follows:

8 (1) When the total disability is only temporary, the schedule of
9 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
10 the total disability continues.

11 (2) Any compensation payable under this section for children not in
12 the custody of the injured worker as of the date of injury shall be
13 payable only to such person as actually is providing the support for
14 such child or children pursuant to the order of a court of record
15 providing for support of such child or children.

16 (3)(a) As soon as recovery is so complete that the present earning
17 power of the worker, at any kind of work, is restored to that existing
18 at the time of the occurrence of the injury, the payments shall cease.
19 If and so long as the present earning power is only partially restored,
20 the payments shall:

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

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

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

36 (c) The prior closure of the claim or the receipt of permanent

1 partial disability benefits shall not affect the rate at which loss of
2 earning power benefits are calculated upon reopening the claim.

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

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

1 ~~shall be resumed~~). Should the available work described, once
2 undertaken by the worker, impede his or her recovery to the extent that
3 in the judgment of his or her physician or licensed advanced registered
4 nurse practitioner he or she should not continue to work, the worker's
5 temporary total disability payments shall be resumed when the worker
6 ceases such work at the direction of the physician or licensed advanced
7 registered nurse practitioner.

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

25 (d) If an employer offers a worker work pursuant to this subsection
26 (4) and the worker must be provided with training or instruction to be
27 qualified to perform the offered work, the employer shall be eligible
28 for a reimbursement from the department for any tuition, books, fees,
29 and materials required for that training or instruction, up to a
30 maximum of one thousand dollars. Reimbursing an employer for the costs
31 of such training or instruction does not constitute a determination by
32 the department that the worker is eligible for vocational services
33 authorized by RCW 51.32.095 and 51.32.099.

34 (e) If an employer offers a worker work pursuant to this subsection
35 (4), and the employer provides the worker with clothing that is
36 necessary to allow the worker to perform the offered work, the employer
37 shall be eligible for reimbursement for such clothing from the
38 department, up to a maximum of four hundred dollars: PROVIDED,

1 HOWEVER, That an employer shall not receive reimbursement for any
2 clothing it provided to the worker that it normally provides to its
3 workers. The clothing purchased for the worker shall become the
4 worker's property once the work comes to an end.

5 (f) If an employer offers a worker work pursuant to this subsection
6 (4) and the worker must be provided with tools or equipment to perform
7 the offered work, the employer shall be eligible for a reimbursement
8 from the department for such tools and equipment and related costs as
9 determined by department rule, up to a maximum of two thousand five
10 hundred dollars. An employer shall not be reimbursed for any tools or
11 equipment purchased prior to offering the work to the worker pursuant
12 to this subsection (4). An employer shall not be reimbursed for any
13 tools or equipment that it normally provides to its workers. The tools
14 and equipment shall be the property of the employer.

15 (g) An employer may offer work to a worker pursuant to this
16 subsection (4) more than once, but in no event may the employer receive
17 wage subsidies for more than sixty-six days of work in a consecutive
18 twenty-four month period under one claim. An employer may continue to
19 offer work pursuant to this subsection (4) after the worker has
20 performed sixty-six days of work, but the employer shall not be
21 eligible to receive wage subsidies for such work.

22 (h) An employer shall not receive any wage subsidies or
23 reimbursement of any expenses pursuant to this subsection (4) unless
24 the employer has completed and submitted the reimbursement request on
25 forms developed by the department, along with all related information
26 required by department rules. No wage subsidy or reimbursement shall
27 be paid to an employer who fails to submit a form for such payment
28 within one year of the date the work was performed. In no event shall
29 an employer receive wage subsidy payments or reimbursements of any
30 expenses pursuant to this subsection (4) unless the worker's physician
31 or licensed advanced registered nurse practitioner has restricted him
32 or her from performing his or her usual work and the worker's physician
33 or licensed advanced registered nurse practitioner has released him or
34 her to perform the work offered.

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

1 (j) Once the worker returns to work under the terms of this
2 subsection (4), he or she shall not be assigned by the employer to work
3 other than the available work described without the (~~worker's written~~
4 ~~consent, or without prior review and~~) approval (~~by~~) of the worker's
5 physician or licensed advanced registered nurse practitioner. An
6 employer who directs a claimant to perform work other than that
7 approved by the attending physician and without the approval of the
8 worker's physician or licensed advanced registered nurse practitioner
9 shall not receive any wage subsidy or other reimbursements for such
10 work.

11 (~~(e)~~) (k) If the worker returns to work under this subsection
12 (4), any employee health and welfare benefits that the worker was
13 receiving at the time of injury shall continue or be resumed at the
14 level provided at the time of injury. Such benefits shall not be
15 continued or resumed if to do so is inconsistent with the terms of the
16 benefit program, or with the terms of the collective bargaining
17 agreement currently in force.

18 (~~(d)~~) (l) In the event of any dispute as to the validity of the
19 work offered or as to the worker's ability to perform the available
20 work offered by the employer, the department shall make the final
21 determination pursuant to an order that contains the notice required by
22 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

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

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

31 (7) No worker shall receive compensation for or during the day on
32 which injury was received or the three days following the same, unless
33 his or her disability shall continue for a period of fourteen
34 consecutive calendar days from date of injury: PROVIDED, That attempts
35 to return to work in the first fourteen days following the injury shall
36 not serve to break the continuity of the period of disability if the
37 disability continues fourteen days after the injury occurs.

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

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

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

	AFTER	PERCENTAGE
13		
14	June 30, 1993	105%
15	June 30, 1994	110%
16	June 30, 1995	115%
17	June 30, 1996	120%

18 (b) For dates of injury or disease manifestation after July 1,
19 2008, be less than fifteen percent of the average monthly wage in the
20 state as computed under RCW 51.08.018 plus an additional ten dollars
21 per month if the worker is married and an additional ten dollars per
22 month for each child of the worker up to a maximum of five children.
23 However, if the monthly payment computed under this subsection ~~((+7+))~~
24 (9)(b) is greater than one hundred percent of the wages of the worker
25 as determined under RCW 51.08.178, the monthly payment due to the
26 worker shall be equal to the greater of the monthly wages of the worker
27 or the minimum benefit set forth in this section on June 30, 2008.

28 ~~((+8+))~~ (10) If the supervisor of industrial insurance determines
29 that the worker is voluntarily retired and is no longer attached to the
30 workforce, benefits shall not be paid under this section.

31 NEW SECTION. **Sec. 6.** The department of labor and industries may
32 adopt rules to implement this act.

1 NEW SECTION. **Sec. 7.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

SB 5566 - S AMD

By Senators Holmquist Newbry, Kilmer

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5 On page 1, line 1 of the title, after "Relating to" strike the
6 remainder of the title and insert "workers' compensation reform through
7 authorization of voluntary settlements, creation of a return to work
8 subsidy program, and authorization of a study of occupational disease;
9 reenacting and amending RCW 51.32.090; adding new sections to chapter
10 51.04 RCW; and creating a new section."

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