

HOUSE BILL REPORT

ESHB 2002

As Passed House:
March 5, 2011

Title: An act relating to industrial insurance employer wage subsidies and reimbursements for light duty or transitional work.

Brief Description: Concerning industrial insurance employer wage subsidies and reimbursements for light duty or transitional work.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Sells, Ryu, Ormsby and Kenney).

Brief History:

Committee Activity:

Labor & Workforce Development: 3/4/11 [DPS].

Floor Activity:

Passed House: 3/5/11, 54-43.

Brief Summary of Engrossed Substitute Bill

- Authorizes State Fund employers to receive a wage subsidy and reimbursements for employing an injured worker at light duty or transitional work.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan.

Staff: Joan Elgee (786-7106).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (Department) or, if qualified, may self-insure. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to various benefits, including time-loss, pension, and medical benefits.

An employer may request that a worker receiving time-loss benefits be certified by a physician or Advanced Registered Nurse Practitioner (ARNP) to be able to perform work other than the usual work. The physician or ARNP must decide whether the worker is physically able to perform the work. Time-loss payments continue until the physician or ARNP releases the worker for the work, and resume if the light duty work comes to an end before the worker can return to the worker's usual job or the available work impedes the worker's recovery.

Summary of Engrossed Substitute Bill:

Legislative findings are made that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work. Return-to-work provisions are modified. Specific reference is made to light duty or transitional work. The process is modified so that the Department must obtain from the attending physician or ARNP a statement confirming the light duty or transitional work is consistent with the worker's medical restriction related to the injury. The statement must be obtained before the start of the light duty or transitional work and must be provided to the employer within three business days after the Department receives the statement.

State Fund Wage Subsidy and Reimbursement.

A State Fund employer may receive a wage subsidy and other reimbursements under certain circumstances. To be eligible, an employer must submit a request for the subsidy or other reimbursement within one year of the date the work was performed. Wage subsidies and reimbursements are payable only if the physician or ARNP has restricted the worker from performing the worker's usual work and the physician or ARNP has released the worker to perform the work offered.

Wage Subsidy.

The wage subsidy is 50 percent of basic, gross wages paid for the work for a maximum of 66 work days in a consecutive 24-month period, up to a maximum of \$10,000. Subsidies may be paid only for wages or salary, and not for any other compensation. No subsidy is payable for a day in which the worker does not actually perform any work.

Reimbursement.

An employer is also eligible for reimbursement for the following:

- *Training or instruction* – Tuition, books, fees, and materials, up to \$1,000.
- *Clothing* – Up to \$400. The clothing becomes the worker's property. No reimbursement is available for any clothing that an employer normally provides to its workers.
- *Tools or equipment* – Up to \$2,500. The tools and equipment are the property of the employer. The reimbursement does not apply to any tools or equipment

purchased before offering the work to the worker or for tools or equipment that the employer normally provides.

Other.

Wage subsidies and reimbursements obtained through willful misrepresentation are subject to a penalty of the amount paid plus 50 percent. An employer's experience rating is not affected by wage subsidies. A dispute about the validity of the work offered or the worker's ability to perform is an appealable order. The reimbursements are paid out of a newly-created Stay-At-Work Account, which is funded by assessments of State Fund employers for the costs of the payments and a reserve. Employers may collect up to one-half the assessment from workers.

The act expires on July 1, 2016.

Appropriation: None.

Fiscal Note: Requested on March 1, 2011.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2011.

Staff Summary of Public Testimony:

(In support) This bill is one way to fix the workers' compensation system and is the responsible path because it addresses long-term disability. Reform does not just mean cutting benefits. The bill will help both employers and workers. When people are able to keep working, they are more likely to return to their regular job. Staying at work also helps with feelings of self-worth. In construction, where much happens in a short timeframe, a person home with a sprained ankle can lose track of projects, which makes the person less attractive to hire. Large employers have many return-to-work options because they have more jobs. This bill will provide an incentive to small employers to keep workers on the job. The employer's experience rating is protected. This program is successful in the State of Oregon.

Having the Department obtain the permission from the doctor and be the intermediary will protect doctors from being overly hounded by employers. A worker was off work and the employer pressured the doctor to allow the worker to return to the worker's regular job, which angered the doctor. The sunset provision is a way to make sure the program will work. It should be the attending physician who grants the approval.

(Opposed) The concept, which is modeled after the Governor's bill, is supported. The program is extremely cost-effective in the State of Oregon. Getting people back to work is good. The bill has not been studied. The bill language is a problem. The bill inserts the Department into the process which will cause delays. The employer, not the Department, obtains the doctor's statement now. The bill will also require the Department to obtain the statement for self-insured employer and will insert the Department into the Centers for Occupational Health and Education process.

Persons Testifying: (In support) Rebecca Johnson, Washington State Labor Council; Nicole Grant, Certified Electrical Workers of Washington; Cody Arledge, Sheetmetal Workers Local

66; Sharon Ness, United Food and Commercial Workers; and Michael Temple, Washington State Association for Justice.

(Opposed) Vickie Kennedy, Department of Labor and Industries; and Larry Stevens, Mechanical Contractors Association and National Electrical Contractors.

Persons Signed In To Testify But Not Testifying: None.