
ENGROSSED SUBSTITUTE HOUSE BILL 2002

State of Washington

62nd Legislature

2011 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Sells, Ryu, Ormsby, and Kenney)

READ FIRST TIME 03/05/11.

1 AN ACT Relating to industrial insurance employer wage subsidies and
2 reimbursements for light duty or transitional work; reenacting and
3 amending RCW 51.32.090; providing an effective date; providing an
4 expiration date; and declaring an emergency.

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

6 **Sec. 1.** 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.

1 If and so long as the present earning power is only partially restored,
2 the payments shall:

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

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

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

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

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

27 (b) The employer of injury (~~requests that~~) may provide light duty
28 or transitional work to a worker who is entitled to temporary total
29 disability under this chapter (~~be certified by a physician or licensed~~
30 advanced-registered nurse practitioner as able to perform available
31 work other than his or her usual work⁷). The department shall obtain
32 from the attending physician or licensed advanced registered nurse
33 practitioner a statement confirming the light duty or transitional work
34 is consistent with the worker's medical restrictions related to the
35 injury. This statement must be obtained before the start of the light
36 duty or transitional work and must be provided to the employer within
37 three business days after the department receives the statement. The
38 employer shall furnish to the physician or licensed advanced registered

1 nurse practitioner, with a copy to the worker, a statement describing
2 the work (~~(available)~~) with the employer of injury in terms that will
3 enable the physician or licensed advanced registered nurse practitioner
4 to relate the physical activities of the job to the worker's
5 disability. The physician or licensed advanced registered nurse
6 practitioner shall then determine whether the worker is physically able
7 to perform the work described. The worker's temporary total disability
8 payments shall (~~continue until the worker is released by his or her~~
9 ~~physician or licensed advanced registered nurse practitioner for the~~
10 ~~work, and begins the work with the employer of injury. If~~) stop
11 effective the date the light duty or transitional job starts.
12 Temporary total disability payments shall resume if the work
13 (~~thereafter~~) comes to an end before the worker's recovery is
14 sufficient in the judgment of his or her physician or licensed advanced
15 registered nurse practitioner to permit him or her to return to his or
16 her usual job, or to perform other available work offered by the
17 employer of injury(~~, the worker's temporary total disability payments~~
18 ~~shall be resumed~~). Should the available work described, once
19 undertaken by the worker, impede his or her recovery to the extent that
20 in the judgment of his or her physician or licensed advanced registered
21 nurse practitioner he or she should not continue to work, the worker's
22 temporary total disability payments shall be resumed when the worker
23 ceases such work at the direction of the physician or licensed advanced
24 registered nurse practitioner.

25 ~~((b))~~ (c) To further encourage employers to maintain the
26 employment of their injured workers, an employer insured with the
27 department and that offers work to a worker pursuant to this subsection
28 (4) shall be eligible for reimbursement of the injured worker's wages
29 for light duty or transitional work equal to fifty percent of the
30 basic, gross wages paid for that work, for a maximum of sixty-six work
31 days within a consecutive twenty-four month period. In no event may
32 the wage subsidies paid to an employer on a claim exceed ten thousand
33 dollars. Wage subsidies shall be calculated using the worker's basic
34 hourly wages or basic salary, and no subsidy shall be paid for any
35 other form of compensation or payment to the worker such as tips,
36 commissions, bonuses, board, housing, fuel, health care, dental care,
37 vision care, per diem, reimbursements for work-related expenses, or any
38 other payments. An employer may not, under any circumstances, receive

1 a wage subsidy for a day in which the worker did not actually perform
2 any work, regardless of whether or not the employer paid the worker
3 wages for that day.

4 (d) If an employer offers a worker work pursuant to this subsection
5 (4) and the worker must be provided with training or instruction to be
6 qualified to perform the offered work, the employer shall be eligible
7 for a reimbursement from the department for any tuition, books, fees,
8 and materials required for that training or instruction, up to a
9 maximum of one thousand dollars. Reimbursing an employer for the costs
10 of such training or instruction does not constitute a determination by
11 the department that the worker is eligible for vocational services
12 authorized by RCW 51.32.095 and 51.32.099.

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

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

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

1 (h) An employer shall not receive any wage subsidies or
2 reimbursement of any expenses pursuant to this subsection (4) unless
3 the employer has completed and submitted the reimbursement request on
4 forms developed by the department, along with all related information
5 required by department rules. No wage subsidy or reimbursement shall
6 be paid to an employer who fails to submit a form for such payment
7 within one year of the date the work was performed. In no event shall
8 an employer receive wage subsidy payments or reimbursements of any
9 expenses pursuant to this subsection (4) unless the worker's physician
10 or licensed advanced registered nurse practitioner has restricted him
11 or her from performing his or her usual work and the worker's physician
12 or licensed advanced registered nurse practitioner has released him or
13 her to perform the work offered.

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

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

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

34 ((+d)) (l) In the event of any dispute as to the validity of the
35 work offered or as to the worker's ability to perform the available
36 work offered by the employer, the department shall make the final
37 determination pursuant to an order that contains the notice required by
38 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

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

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

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

16 (~~(6)~~) (8) Should a worker suffer a temporary total disability and
17 should his or her employer at the time of the injury continue to pay
18 him or her the wages which he or she was earning at the time of such
19 injury, such injured worker shall not receive any payment provided in
20 subsection (1) of this section during the period his or her employer
21 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
22 sick leave, or other similar benefits shall not be deemed to be
23 payments by the employer for the purposes of this subsection.

24 (~~(7)~~) (9) In no event shall the monthly payments provided in this
25 section:

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

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

33 (b) For dates of injury or disease manifestation after July 1,
34 2008, be less than fifteen percent of the average monthly wage in the
35 state as computed under RCW 51.08.018 plus an additional ten dollars

1 per month if the worker is married and an additional ten dollars per
2 month for each child of the worker up to a maximum of five children.
3 However, if the monthly payment computed under this subsection (~~((7))~~)
4 (9)(b) is greater than one hundred percent of the wages of the worker
5 as determined under RCW 51.08.178, the monthly payment due to the
6 worker shall be equal to the greater of the monthly wages of the worker
7 or the minimum benefit set forth in this section on June 30, 2008.

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

11 NEW SECTION. **Sec. 2.** Section 1 of this act expires July 1, 2016.

12 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 July 1, 2011.

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