
ENGROSSED SENATE BILL 5566

State of Washington 62nd Legislature 2011 Regular Session

By Senator Kohl-Welles; by request of Governor Gregoire

Read first time 01/31/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to workers' compensation reform through
2 authorization of voluntary settlements, creation of a return to work
3 subsidy program, and authorization of a study of occupational disease;
4 reenacting and amending RCW 51.32.090; adding new sections to chapter
5 51.04 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.04 RCW
8 to read as follows:

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

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

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

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

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

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

8 (ii) For a state fund claim, the worker, the employer, and the
9 department.

10 (c) For state fund claims, the department shall negotiate the
11 settlement with the worker. Any voluntary settlement agreement entered
12 into under this section must be signed by the parties or their
13 representatives and must clearly state that the parties understand and
14 agree to the terms of the voluntary settlement agreement. Unless one
15 of the parties revokes consent to the agreement, as provided in
16 subsection (3) of this section, the voluntary settlement agreement
17 becomes final and binding thirty days after approval of the agreement
18 by the board of industrial insurance appeals.

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

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

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

1 (c)(i) The settlement officer may approve a settlement agreement
2 only if the officer finds that the settlement is in the best interest
3 of the worker. When determining whether the settlement is in the best
4 interest of the worker, the settlement officer shall consider the
5 following factors, taken as a whole, with no individual factor being
6 determinative:

7 (A) The nature and extent of the injuries and disabilities of the
8 worker;

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

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

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

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

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

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

20 (d) If the settlement officer issues an order allowing the
21 voluntary settlement agreement, the order must be submitted to the
22 board.

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

27 (4) Upon receiving the voluntary settlement agreement, the board
28 shall approve the agreement within thirty working days of receipt
29 unless it finds that the parties have not entered into the agreement
30 knowingly and willingly. If the board approves the agreement, it shall
31 provide notice to the department of the binding terms of the agreement
32 and provide for placement of the agreement in the applicable claim
33 files.

34 (5) A party may revoke consent to the voluntary settlement
35 agreement by providing written notice to the other parties and the
36 board within thirty days after the date the agreement is approved by
37 the board.

1 (6) To the extent the worker is found to be entitled to temporary
2 total disability or permanent total disability benefits while a
3 voluntary settlement agreement is being negotiated, or during the
4 revocation period of an agreement, the benefits must be paid until the
5 agreement becomes final.

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

13 (8) A claim closed pursuant to a voluntary settlement agreement can
14 be reopened only upon a showing of worsening of the related medical
15 conditions under RCW 51.32.160 for medical treatment only. Further
16 temporary total, temporary partial, permanent partial, or permanent
17 total benefits are not payable under the same claim for which a
18 voluntary settlement has been approved by the board.

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

21 (1) In calendar years 2016, 2021, and 2026, the department shall
22 contract for an independent study of voluntary settlement agreements
23 approved by the board under this section. The study must be performed
24 by a researcher that has experience in workers' compensation systems.
25 When selecting the independent researcher, the department shall consult
26 with the workers' compensation advisory committee. The study must
27 evaluate the quality and effectiveness of settlement agreements of
28 state fund and self-insured claims, provide information on the impact
29 of settlement agreements to the state fund and to self-insured
30 employers, and evaluate the outcomes of workers who have settled their
31 claims. The study must be submitted to the appropriate committees of
32 the legislature.

33 (2) The department shall contract with an independent entity with
34 research experience in workers' compensation systems nationwide to
35 study the nature, incidence, and cost of occupational disease claims in
36 the Washington workers' compensation system. When selecting the
37 independent researcher the department shall consult with the workers'

1 compensation advisory committee. The study shall include, but not be
2 limited to, an examination of the frequency and severity of
3 occupational disease claims for state fund and self-insured employers,
4 both currently and with respect to historical trends; the impact of
5 occupational disease claims on long-term disability and pension trends;
6 consideration of the statutory definition of occupational disease, and
7 interpretation of it by courts, the board, and the department, how it
8 compares to definitions in other states' systems and whether as applied
9 it clearly delineates conditions caused by occupational exposures and
10 those caused by nonoccupational exposures; consideration of the statute
11 of limitation for filing occupational disease claims, and its
12 interpretation by courts, and whether as applied it functions as an
13 appropriate limitation on the filing of state claims; issues related to
14 the apportionment of occupational diseases between workers and
15 employers; and a comparison of other states and their definitions of
16 occupational disease. The study must be submitted to the appropriate
17 committees of the legislature by September 1, 2012.

18 (3) The department shall contract for an independent study of the
19 return to work provisions under RCW 51.32.090. The study must be
20 performed by a researcher that has experience in workers' compensation
21 systems. When selecting the independent researcher, the department
22 shall consult with the workers' compensation advisory committee. The
23 study must evaluate the quality and effectiveness of the return to work
24 program and whether the program is being utilized by employers, and
25 evaluate the outcomes of workers participating in the program. The
26 study must be submitted to the appropriate committees of the
27 legislature by December 2016.

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

30 The department must maintain copies of all voluntary settlement
31 agreements entered into between the parties and develop processes under
32 RCW 51.28.070 to furnish copies of such agreements to any party
33 contemplating any subsequent voluntary settlement agreement with the
34 worker on any claim. The department shall also furnish claims
35 histories that include all prior permanent disability awards received
36 by the worker on any claims by body part and category or percentage
37 rating, as applicable. Copies of such agreements and claims histories

1 shall be furnished within ten working days of a written request. An
2 employer may not consider a prior settlement agreement or claims
3 history when making a decision about hiring or the terms or conditions
4 of employment.

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

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

19 **Sec. 5.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
20 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) shall apply, so long as
23 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.

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

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

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

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

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

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

22 (b) The employer of injury (~~requests that~~) may provide light duty
23 or transitional work to a worker who is entitled to temporary total
24 disability under this chapter (~~be certified by a physician or licensed~~
25 advanced registered nurse practitioner as able to perform available
26 work other than his or her usual work,). The employer or the
27 department shall obtain from the physician or licensed advanced
28 registered nurse practitioner a statement confirming the light duty or
29 transitional work is consistent with the worker's medical restrictions
30 related to the injury. This statement should be obtained before the
31 start of the light duty or transitional work unless the worker has
32 already returned to work with the employer of injury in which case the
33 statement may be obtained following the start date of the job. The
34 employer shall furnish to the physician or licensed advanced registered
35 nurse practitioner, with a copy to the worker, a statement describing
36 the work (~~available~~) with the employer of injury in terms that will
37 enable the physician or licensed advanced registered nurse practitioner
38 to relate the physical activities of the job to the worker's

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

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

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

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

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

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

36 (h) An employer shall not receive any wage subsidies or
37 reimbursement of any expenses pursuant to this subsection (4) unless
38 the employer has completed and submitted the reimbursement request on

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

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

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

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

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

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

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

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

14 (~~(6)~~) (8) Should a worker suffer a temporary total disability and
15 should his or her employer at the time of the injury continue to pay
16 him or her the wages which he or she was earning at the time of such
17 injury, such injured worker shall not receive any payment provided in
18 subsection (1) of this section during the period his or her employer
19 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
20 sick leave, or other similar benefits shall not be deemed to be
21 payments by the employer for the purposes of this subsection.

22 (~~(7)~~) (9) In no event shall the monthly payments provided in this
23 section:

24 (a) Exceed the applicable percentage of the average monthly wage in
25 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%

31 (b) For dates of injury or disease manifestation after July 1,
32 2008, be less than fifteen percent of the average monthly wage in the
33 state as computed under RCW 51.08.018 plus an additional ten dollars
34 per month if the worker is married and an additional ten dollars per
35 month for each child of the worker up to a maximum of five children.

1 However, if the monthly payment computed under this subsection (~~(7)~~)
2 (9)(b) is greater than one hundred percent of the wages of the worker
3 as determined under RCW 51.08.178, the monthly payment due to the
4 worker shall be equal to the greater of the monthly wages of the worker
5 or the minimum benefit set forth in this section on June 30, 2008.

6 (~~(8)~~) (10) If the supervisor of industrial insurance determines
7 that the worker is voluntarily retired and is no longer attached to the
8 workforce, benefits shall not be paid under this section.

9 NEW SECTION. Sec. 6. The department of labor and industries may
10 adopt rules to implement this act.

11 NEW SECTION. Sec. 7. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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