
ENGROSSED HOUSE BILL 1887

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Sawyer, Ryu, Green, and Freeman

Read first time 02/14/13. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to increasing educational options under vocational
2 rehabilitation plans; and amending RCW 51.32.099.

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

4 **Sec. 1.** RCW 51.32.099 and 2011 c 291 s 2 are each amended to read
5 as follows:

6 (1)(a) The legislature intends to create improved vocational
7 outcomes for Washington state injured workers and employers through
8 legislative and regulatory change under a pilot program for the period
9 of January 1, 2008, through June 30, 2013. This pilot vocational
10 system is intended to allow opportunities for eligible workers to
11 participate in meaningful retraining in high-demand occupations,
12 improve successful return to work and achieve positive outcomes for
13 workers, reduce the incidence of repeat vocational services, increase
14 accountability and responsibility, and improve cost predictability. To
15 facilitate the study and evaluation of the results of the proposed
16 changes, the department shall establish the temporary funding of
17 certain state fund vocational costs through the medical aid account to
18 ensure the appropriate assessments to employers for the costs of their
19 claims for vocational services in accordance with RCW 51.32.0991.

1 (b) An independent review and study of the effects of the pilot
2 program shall be conducted to determine whether it has achieved the
3 appropriate outcomes at reasonable cost to the system. The review
4 shall include, at a minimum, a report on the department's performance
5 with regard to the provision of vocational services, the skills
6 acquired by workers who receive retraining services, the types of
7 training programs approved, whether the workers are employed, at what
8 jobs and wages after completion of the training program and at various
9 times subsequent to their claim closure, the number and demographics of
10 workers who choose the option provided in subsection (4)(b) of this
11 section, and their employment and earnings status at various times
12 subsequent to claim closure. The department may adopt rules, in
13 collaboration with the subcommittee created under (c)(iii) of this
14 subsection, to further define the scope and elements of the required
15 study. Reports of the independent researcher are due on December 1,
16 2010, December 1, 2011, and December 1, 2012.

17 (c) In implementing the pilot program, the department shall:

18 (i) Establish a vocational initiative project that includes
19 participation by the department as a partner with WorkSource, the
20 established state system that administers the federal workforce
21 investment act of 1998. As a partner, the department shall place
22 vocational professional full-time employees at pilot WorkSource
23 locations; refer some workers for vocational services to these
24 vocational professionals; and work with employers in work source pilot
25 areas to market the benefits of on-the-job training programs and with
26 community colleges to reserve slots in high employer demand programs of
27 study as defined in RCW 28B.50.030. These on-the-job training programs
28 and community college slots may be considered by both department and
29 private sector vocational professionals for vocational plan
30 development. The department will also assist stakeholders in
31 developing additional vocational training programs in various
32 industries, including but not limited to agriculture and construction.
33 These programs will expand the choices available to injured workers in
34 developing their vocational training plans with the assistance of
35 vocational professionals.

36 (ii) Develop and maintain a register of state fund and self-insured
37 workers who have been retrained or have selected any of the vocational

1 options described in this section for at least the duration of the
2 pilot program.

3 (iii) Create a vocational rehabilitation subcommittee made up of
4 members appointed by the director for at least the duration of the
5 pilot program. This subcommittee shall provide the business and labor
6 partnership needed to maintain focus on the intent of the pilot
7 program, as described in this section, and provide consistency and
8 transparency to the development of rules and policies. The
9 subcommittee shall report to the director at least annually and
10 recommend to the director and the legislature any additional statutory
11 changes needed, which may include extension of the pilot period. The
12 subcommittee shall provide input and oversight with the department
13 concerning the study required under (b) of this subsection. The
14 subcommittee shall provide recommendations for additional changes or
15 incentives for injured workers to return to work with their employer of
16 injury. The subcommittee shall also consider options that, under
17 limited circumstances, would allow injured workers to attend
18 baccalaureate institutions under their vocational rehabilitation plans
19 and, by December 31, 2013, the subcommittee shall provide
20 recommendations to the director and the legislature on statutory
21 changes needed to develop those options.

22 (iv) The department shall develop an annual report concerning
23 Washington's workers' compensation vocational rehabilitation system to
24 the legislature and to the subcommittee by December 1, 2009, and
25 annually thereafter with the final report due by December 1, 2012. The
26 annual report shall include the number of workers who have participated
27 in more than one vocational training plan beginning with plans approved
28 on January 1, 2008, and in which industries those workers were
29 employed. The final report shall include the department's assessment
30 and recommendations for further legislative action, in collaboration
31 with the subcommittee.

32 (2)(a) For the purposes of this section, the day the worker
33 commences vocational plan development means the date the department or
34 self-insurer notifies the worker of his or her eligibility for plan
35 development services or of an eligibility determination in response to
36 a dispute of a vocational decision.

37 (b) When the supervisor or supervisor's designee has decided that
38 vocational rehabilitation is both necessary and likely to make the

1 worker employable at gainful employment, he or she shall be provided
2 with services necessary to develop a vocational plan that, if
3 completed, would render the worker employable. The vocational
4 professional assigned to the claim shall, at the initial meeting with
5 the worker, fully inform the worker of the return-to-work priorities
6 set forth in RCW 51.32.095(2) and of his or her rights and
7 responsibilities under the workers' compensation vocational system.
8 The department shall provide tools to the vocational professional for
9 communicating this and other information required by RCW 51.32.095 and
10 this section to the worker.

11 (c) On the date the worker commences vocational plan development,
12 the department shall also inform the employer in writing of the
13 employer's right to make a valid return-to-work offer during the first
14 fifteen days following the commencement of vocational plan development.
15 However, at the sole discretion of the supervisor or the supervisor's
16 designee, an employer may be granted an extension of time of up to ten
17 additional days to make a valid return-to-work offer. The additional
18 days may be allowed by the department with or without a request from
19 the employer. The extension may only be granted if the employer made
20 a return-to-work offer to the worker within fifteen days of the date
21 the worker commenced vocational plan development that met some but not
22 all of the requirements in this section. To be valid, the offer must
23 be for bona fide employment with the employer of injury, consistent
24 with the worker's documented physical and mental restrictions as
25 provided by the worker's health care provider. When the employer makes
26 a valid return-to-work offer, the vocational plan development services
27 and temporary total disability compensation shall be terminated
28 effective on the starting date for the job without regard to whether
29 the worker accepts the return-to-work offer.

30 (d) Following the time period described in (c) of this subsection,
31 the employer may still provide, and the worker may accept, any valid
32 return-to-work offer. The worker's acceptance of such an offer shall
33 result in the termination of vocational plan development or
34 implementation services and temporary total disability compensation
35 effective the day the employment begins.

36 (3)(a) All vocational plans must contain an accountability
37 agreement signed by the worker detailing expectations regarding
38 progress, attendance, and other factors influencing successful

1 participation in the plan. Failure to abide by the agreed expectations
2 shall result in suspension of vocational benefits pursuant to RCW
3 51.32.110.

4 (b) Any formal education included as part of the vocational plan
5 must be for an accredited or licensed program or other program approved
6 by the department. The department shall develop rules that provide
7 criteria for the approval of nonaccredited or unlicensed programs.

8 (c) The vocational plan for an individual worker must be completed
9 and submitted to the department within ninety days of the day the
10 worker commences vocational plan development. The department may
11 extend the ninety days for good cause. Criteria for good cause shall
12 be provided in rule. The frequency and reasons for good cause
13 extensions shall be reported to the subcommittee created under
14 subsection (1)(c)(iii) of this section.

15 (d) Costs for the vocational plan may include books, tuition, fees,
16 supplies, equipment, child or dependent care, training fees for on-the-
17 job training, the cost of furnishing tools and other equipment
18 necessary for self-employment or reemployment, and other necessary
19 expenses in an amount not to exceed twelve thousand dollars. This
20 amount shall be adjusted effective July 1 of each year for vocational
21 plans or retraining benefits available under subsection (4)(b) of this
22 section approved on or after this date but before June 30 of the next
23 year based on the average percentage change in tuition for the next
24 fall quarter for all Washington state community colleges.

25 (e) The duration of the vocational plan shall not exceed two years
26 from the date the plan is implemented. The worker shall receive
27 temporary total disability compensation under RCW 51.32.090 and the
28 cost of transportation while he or she is actively and successfully
29 participating in a vocational plan.

30 (f) If the worker is required to reside away from his or her
31 customary residence, the reasonable cost of board and lodging shall
32 also be paid.

33 (4) Vocational plan development services shall be completed within
34 ninety days of commencing. Except as provided in RCW 51.32.095(3),
35 during vocational plan development the worker shall, with the
36 assistance of a vocational professional, participate in vocational
37 counseling and occupational exploration to include, but not be limited
38 to, identifying possible job goals, training needs, resources, and

1 expenses, consistent with the worker's physical and mental status. A
2 vocational rehabilitation plan shall be developed by the worker and the
3 vocational professional and submitted to the department or
4 self-insurer. Following this submission, the worker shall elect one of
5 the following options:

6 (a) Option 1: The department or self-insurer implements and the
7 worker participates in the vocational plan developed by the vocational
8 professional and approved by the worker and the department or
9 self-insurer. For state fund claims, the department must review and
10 approve the vocational plan before implementation may begin. If the
11 department takes no action within fifteen days, the plan is deemed
12 approved. The worker may, within fifteen days of the department's
13 approval of the plan or of a determination that the plan is valid
14 following a dispute, elect option 2. However, in the sole discretion
15 of the supervisor or supervisor's designee, the department may approve
16 an election for option 2 benefits that was submitted in writing within
17 twenty-five days of the department's approval of the plan or of a
18 determination that the plan is valid following a dispute if the worker
19 provides a written explanation establishing that he or she was unable
20 to submit his or her election of option 2 benefits within fifteen days.
21 In no circumstance may the department approve of an election for option
22 2 benefits that was submitted more than twenty-five days after the
23 department's approval of a retraining plan or of a determination that
24 a plan is valid following a dispute.

25 (i) Following successful completion of the vocational plan, any
26 subsequent assessment of whether vocational rehabilitation is both
27 necessary and likely to enable the injured worker to become employable
28 at gainful employment under RCW 51.32.095(1) shall include
29 consideration of transferable skills obtained in the vocational plan.

30 (ii) If a vocational plan is successfully completed on a claim
31 which is thereafter reopened as provided in RCW 51.32.160, the cost and
32 duration available for any subsequent vocational plan is limited to
33 that in subsection (3)(d) and (e) of this section, less that previously
34 expended.

35 (b) Option 2: The worker declines further vocational services
36 under the claim and receives an amount equal to six months of temporary
37 total disability compensation under RCW 51.32.090. The award is
38 payable in biweekly payments in accordance with the schedule of

1 temporary total disability payments, until such award is paid in full.
2 These payments shall not include interest on the unpaid balance.
3 However, upon application by the worker, and at the discretion of the
4 department, the compensation may be converted to a lump sum payment.
5 The vocational costs defined in subsection (3)(d) of this section shall
6 remain available to the worker, upon application to the department or
7 self-insurer, for a period of five years. The vocational costs shall,
8 if expended, be available for programs or courses at any accredited or
9 licensed institution or program from a list of those approved by the
10 department for tuition, books, fees, supplies, equipment, and tools,
11 without department or self-insurer oversight. The department shall
12 issue an order as provided in RCW 51.52.050 confirming the option 2
13 election, setting a payment schedule, and terminating temporary total
14 disability benefits effective the date of the order confirming that
15 election. The department shall thereafter close the claim. A worker
16 who elects option 2 benefits shall not be entitled to further temporary
17 total, or to permanent total, disability benefits except upon a showing
18 of a worsening in the condition or conditions accepted under the claim
19 such that claim closure is not appropriate, in which case the option 2
20 selection will be rescinded and the amount paid to the worker will be
21 assessed as an overpayment. A claim that was closed based on the
22 worker's election of option 2 benefits may be reopened as provided in
23 RCW 51.32.160, but cannot be reopened for the sole purpose of allowing
24 the worker to seek vocational assistance.

25 (i) If within five years from the date the option 2 order becomes
26 final, the worker is subsequently injured or suffers an occupational
27 disease or reopens the claim as provided in RCW 51.32.160, and
28 vocational rehabilitation is found both necessary and likely to enable
29 the injured worker to become employable at gainful employment under RCW
30 51.32.095(1), the duration of any vocational plan under subsection
31 (3)(e) of this section shall not exceed eighteen months.

32 (ii) If the available vocational costs are utilized by the worker,
33 any subsequent assessment of whether vocational rehabilitation is both
34 necessary and likely to enable the injured worker to become employable
35 at gainful employment under RCW 51.32.095(1) shall include
36 consideration of the transferable skills obtained.

37 (iii) If the available vocational costs are utilized by the worker

1 and the claim is thereafter reopened as provided in RCW 51.32.160, the
2 cost available for any vocational plan is limited to that in subsection
3 (3)(d) of this section less that previously expended.

4 (iv) Option 2 may only be elected once per worker.

5 (c) The director, in his or her sole discretion, may provide the
6 worker vocational assistance not to exceed that in subsection (3) of
7 this section, without regard to the worker's prior option selection or
8 benefits expended, where vocational assistance would prevent permanent
9 total disability under RCW 51.32.060.

10 (5)(a) As used in this section, "vocational plan interruption"
11 means an occurrence which disrupts the plan to the extent the
12 employability goal is no longer attainable. "Vocational plan
13 interruption" does not include institutionally scheduled breaks in
14 educational programs, occasional absence due to illness, or
15 modifications to the plan which will allow it to be completed within
16 the cost and time provisions of subsection (3)(d) and (e) of this
17 section.

18 (b) When a vocational plan interruption is beyond the control of
19 the worker, the department or self-insurer shall recommence plan
20 development. If necessary to complete vocational services, the cost
21 and duration of the plan may include credit for that expended prior to
22 the interruption. A vocational plan interruption is considered outside
23 the control of the worker when it is due to the closure of the
24 accredited institution, when it is due to a death in the worker's
25 immediate family, or when documented changes in the worker's accepted
26 medical conditions prevent further participation in the vocational
27 plan.

28 (c) When a vocational plan interruption is the result of the
29 worker's actions, the worker's entitlement to benefits shall be
30 suspended in accordance with RCW 51.32.110. If plan development or
31 implementation is recommenced, the cost and duration of the plan shall
32 not include credit for that expended prior to the interruption. A
33 vocational plan interruption is considered a result of the worker's
34 actions when it is due to the failure to meet attendance expectations
35 set by the training or educational institution, failure to achieve
36 passing grades or acceptable performance review, unaccepted or
37 postinjury conditions that prevent further participation in the

1 vocational plan, or the worker's failure to abide by the accountability
2 agreement per subsection (3)(a) of this section.

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