
ENGROSSED SUBSTITUTE SENATE BILL 5127

State of Washington

63rd Legislature

2013 Regular Session

By Senate Commerce & Labor (originally sponsored by Senators Holmquist Newbry, Tom, King, Sheldon, Baumgartner, Ericksen, Rivers, Litzow, Benton, Dammeier, Carrell, Braun, Bailey, Honeyford, Becker, Hill, Roach, Schoesler, Parlette, Padden, and Hewitt)

READ FIRST TIME 01/29/13.

1 AN ACT Relating to amending provisions governing structured
2 settlements by lowering age barriers and clarifying legislative intent;
3 amending RCW 51.04.063; and creating a new section.

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

5 **Sec. 1.** RCW 51.04.063 and 2011 1st sp.s. c 37 s 302 are each
6 amended to read as follows:

7 (1) Notwithstanding RCW 51.04.060 or any other provision of this
8 title, (~~beginning on January 1, 2012,~~) an injured worker who is at
9 least (~~fifty five~~) forty years of age on or after (~~January 1, 2012,~~
10 ~~fifty three years of age on or after January 1, 2015, or fifty years of~~
11 ~~age on or after January 1, 2016,~~) the effective date of this act may
12 choose from the following: (a) To continue to receive all benefits for
13 which they are eligible under this title, (b) to participate in
14 vocational training if eligible, or (c) to initiate and agree to a
15 resolution of their claim with a structured settlement.

16 (2)(a) As provided in this section, the parties to an allowed claim
17 may initiate and agree to resolve a claim with a structured settlement
18 for all benefits other than medical. Parties as defined in (b) of this
19 subsection may only initiate claim resolution structured settlements if

1 at least one hundred eighty days have passed since the claim was
2 received by the department or self-insurer and the order allowing the
3 claim is final and binding. All requirements of this title regarding
4 entitlement to and payment of benefits will apply during this period.
5 All claim resolution structured settlement agreements must be approved
6 by the board of industrial insurance appeals.

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

8 (i) For a state fund claim, the worker, the employer, and the
9 department. The employer will not be a party if the costs of the claim
10 or claims are no longer included in the calculation of the employer's
11 experience factor used to determine premiums, if they cannot be
12 located, are no longer in business, or they fail to respond or decline
13 to participate after timely notice of the claim resolution settlement
14 process provided by the board and the department.

15 (ii) For a self-insured claim, the worker and the employer.

16 (c) The claim resolution structured settlement agreements shall:

17 (i) Bind the parties with regard to all aspects of a claim except
18 medical benefits unless revoked by one of the parties as provided in
19 subsection (6) of this section;

20 (ii) Provide a periodic payment schedule to the worker equal to at
21 least twenty-five percent but not more than one hundred fifty percent
22 of the average monthly wage in the state pursuant to RCW 51.08.018,
23 except for the initial payment which may be up to six times the average
24 monthly wage in the state pursuant to RCW 51.08.018;

25 (iii) Not set aside or reverse an allowance order;

26 (iv) Not subject any employer who is not a signatory to the
27 agreement to any responsibility or burden under any claim; and

28 (v) Not subject any funds covered under this title to any
29 responsibility or burden without prior approval from the director or
30 designee.

31 (d) For state fund claims, the department shall negotiate the claim
32 resolution structured settlement agreement with the worker or their
33 representative and with the employer or employers and their
34 representative or representatives.

35 (e) For self-insured claims, the self-insured employer shall
36 negotiate the agreement with the worker or their representative.
37 Workers of self-insured employers who are unrepresented may request

1 that the office of the ombudsman for self-insured injured workers
2 provide assistance or be present during negotiations.

3 (f) Terms of the agreement may include the parties' agreement that
4 the claim shall remain open for future necessary medical or surgical
5 treatment related to the injury where there is a reasonable expectation
6 such treatment is necessary. The parties may also agree that specific
7 future treatment shall be provided without the application required in
8 RCW 51.32.160.

9 (g) Any claim resolution structured settlement agreement entered
10 into under this section must be in writing and signed by the parties or
11 their representatives and must clearly state that the parties
12 understand and agree to the terms of the agreement.

13 (h) If a worker is not represented by an attorney at the time of
14 signing a claim resolution structured settlement agreement, the parties
15 must forward a copy of the signed agreement to the board with a request
16 for a conference with an industrial appeals judge. The industrial
17 appeals judge must schedule a conference with all parties within
18 fourteen days for the purpose of (i) reviewing the terms of the
19 proposed settlement agreement by the parties; and (ii) ensuring the
20 worker has an understanding of the benefits generally available under
21 this title and that a claim resolution structured settlement agreement
22 may alter the benefits payable on the claim or claims. The judge may
23 schedule the initial conference for a later date with the consent of
24 the parties.

25 (i) Before approving the agreement, the industrial appeals judge
26 shall ensure the worker has an adequate understanding of the agreement
27 and its consequences to the worker.

28 (j) The industrial appeals judge may approve a claim resolution
29 structured settlement agreement only if the judge finds that the
30 agreement is in the best interest of the worker. When determining
31 whether the agreement is in the best interest of the worker, the
32 industrial appeals judge shall consider the following factors, taken as
33 a whole, with no individual factor being determinative:

34 (i) The nature and extent of the injuries and disabilities of the
35 worker;

36 (ii) The age and life expectancy of the injured worker;

37 (iii) Other benefits the injured worker is receiving or is entitled

1 to receive and the effect a claim resolution structured settlement
2 agreement might have on those benefits; and

3 (iv) The marital or domestic partnership status of the injured
4 worker.

5 (k) Within seven days after the conference, the industrial appeals
6 judge shall issue an order allowing or rejecting the claim resolution
7 structured settlement agreement. There is no appeal from the
8 industrial appeals judge's decision.

9 (l) If the industrial appeals judge issues an order allowing the
10 claim resolution structured settlement agreement, the order must be
11 submitted to the board.

12 (3) Upon receiving the agreement, the board shall approve it within
13 thirty working days of receipt unless it finds that:

14 (a) The parties have not entered into the agreement knowingly and
15 willingly;

16 (b) The agreement does not meet the requirements of a claim
17 resolution structured settlement agreement;

18 (c) The agreement is the result of a material misrepresentation of
19 law or fact;

20 (d) The agreement is the result of harassment or coercion; or

21 (e) The agreement is unreasonable as a matter of law.

22 (4) If a worker is represented by an attorney at the time of
23 signing a claim resolution structured settlement agreement, the parties
24 shall submit the agreement directly to the board without the conference
25 described in this section. The requirements of a claim resolution
26 structured settlement agreement for the purposes of subsection (3) of
27 this section do not include the determination under subsection (2)(j)
28 of this section if a worker is represented by an attorney at the time
29 of signing a claim resolution structured settlement agreement.

30 (5) If the board approves the agreement, it shall provide notice to
31 all parties. The department shall place the agreement in the
32 applicable claim file or files.

33 (6) A party may revoke consent to the claim resolution structured
34 settlement agreement by providing written notice to the other parties
35 and the board within thirty days after the date the agreement is
36 approved by the board.

37 (7) To the extent the worker is entitled to any benefits while a
38 claim resolution structured settlement agreement is being negotiated or

1 during the revocation period of an agreement, the benefits must be paid
2 pursuant to the requirements of this title until the agreement becomes
3 final.

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

10 (9) All payments made to a worker pursuant to a final claim
11 resolution structured settlement agreement must be reported to the
12 department as claims costs pursuant to this title. If a self-insured
13 employer contracts with a third-party administrator for claim services
14 and the payment of benefits under this title, the third-party
15 administrator shall also disburse the structured settlement payments
16 pursuant to the agreement.

17 (10) Claims closed pursuant to a claim resolution structured
18 settlement agreement can be reopened pursuant to RCW 51.32.160 for
19 medical treatment only. Further temporary total, temporary partial,
20 permanent partial, or permanent total benefits are not payable under
21 the same claim or claims for which a claim resolution structured
22 settlement agreement has been approved by the board and has become
23 final.

24 (11) Parties aggrieved by the failure of any other party to comply
25 with the terms of a claim resolution structured settlement agreement
26 have one year from the date of failure to comply to petition to the
27 board. If the board determines that a party has failed to comply with
28 an agreement, they will order compliance and will impose a penalty
29 payable to the aggrieved party of up to twenty-five percent of the
30 monetary amount unpaid at the time the petition for noncompliance was
31 filed. The board will also decide on any disputes as to attorneys'
32 fees for services related to claim resolution structured settlement
33 agreements.

34 (12) Parties and their representatives may not use settlement
35 offers or the claim resolution structured settlement agreement process
36 to harass or coerce any party. If the department determines that an
37 employer has engaged in a pattern of harassment or coercion, the

1 employer may be subject to penalty or corrective action, and may be
2 removed from the retrospective rating program or be decertified from
3 self-insurance under RCW 51.14.030.

4 NEW SECTION. **Sec. 2.** The amendment to RCW 51.04.063(4) by this
5 act is an explicit restatement of the legislature's original intent
6 that a finding under RCW 51.04.063(2)(j) is required only when the
7 worker is not represented by an attorney at the time of signing a claim
8 resolution structured settlement agreement. Because this provision is
9 a clarification of the legislature's original intent, it applies
10 retroactively.

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