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SECOND ENGROSSED SUBSTITUTE SENATE BILL 5127

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State of Washington

63rd Legislature

2014 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 creating the workers' recovery act by amending  
2 provisions governing structured settlements by lowering age barriers  
3 and clarifying legislative intent; amending RCW 51.04.063; and creating  
4 new sections.

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

6 **Sec. 1.** RCW 51.04.063 and 2013 c 23 s 104 are each amended to read  
7 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (e) For self-insured claims, the self-insured employer shall  
37 negotiate the agreement with the worker or his or her representative.

1 Workers of self-insured employers who are unrepresented may request  
2 that the office of the ombuds for self-insured injured workers provide  
3 assistance or be present during negotiations.

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

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

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

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

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

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

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

1 (iii) Other benefits the injured worker is receiving or is entitled  
2 to receive and the effect a claim resolution structured settlement  
3 agreement might have on those benefits; and

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) To the extent the worker is entitled to any benefits while a  
2 claim resolution structured settlement agreement is being negotiated or  
3 during the revocation period of an agreement, the benefits must be paid  
4 pursuant to the requirements of this title until the agreement becomes  
5 final.

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

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

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

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

36 (12) Parties and their representatives may not use settlement  
37 offers or the claim resolution structured settlement agreement process  
38 to harass or coerce any party. If the department determines that an

1 employer has engaged in a pattern of harassment or coercion, the  
2 employer may be subject to penalty or corrective action, and may be  
3 removed from the retrospective rating program or be decertified from  
4 self-insurance under RCW 51.14.030.

5 NEW SECTION. **Sec. 2.** This act may be known and cited as the  
6 workers' recovery act.

7 NEW SECTION. **Sec. 3.** The amendment to RCW 51.04.063(4) by this  
8 act is an explicit restatement of the legislature's original intent  
9 that a finding under RCW 51.04.063(2)(j) is required only when the  
10 worker is not represented by an attorney at the time of signing a claim  
11 resolution structured settlement agreement. Because this provision is  
12 a clarification of the legislature's original intent, it applies  
13 retroactively.

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