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**SENATE BILL 5516**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Braun, Baumgartner, Rivers, Sheldon, Schoesler, Bailey, and Honeyford

AN ACT Relating to compensation for injured workers; amending RCW 51.32.090; adding new sections to chapter 51.04 RCW; creating a new section; and repealing RCW 51.04.063, 51.04.065, and 51.04.069.

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

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

(1)(a) Notwithstanding RCW 51.04.060 or any other provision of this title, beginning September 1, 2015, the parties to an allowed claim for benefits may enter into a voluntary settlement agreement as provided in this section with respect to one or more allowed claims for benefits under this title. All voluntary settlement agreements must be approved by the board of industrial insurance appeals. The voluntary settlement agreement may:

(i) Resolve a claim for all benefits other than medical;

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

(iii) Not be initiated until at least one hundred eighty days have passed since the claim was received by the department or self-insurer and the order allowing the claim is final and binding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) In calendar years 2018, 2023, and 2028, the department must contract for an independent study of voluntary settlement agreements approved by the board under this section. The study must be performed by a researcher that has experience in workers' compensation systems. When selecting the independent researcher, the department must consult with the workers' compensation advisory committee. The study must evaluate the quality and effectiveness of settlement agreements of state fund and self-insured claims, provide information on the impact of settlement agreements to the state fund and to self-insured employers, and evaluate the outcomes of workers who have settled their claims. The study must be submitted to the appropriate committees of the legislature.

(2) The department must contract for an independent study of the return to work provisions under RCW 51.32.090. The study must be performed by a researcher that has experience in workers' compensation systems. When selecting the independent researcher, the department must consult with the workers' compensation advisory committee. The study must evaluate the quality and effectiveness of the return to work program and whether the program is being utilized by employers, and evaluate the outcomes of workers participating in the program. The study must be submitted to the appropriate committees of the legislature by December 2018.

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

The department must maintain copies of all voluntary settlement agreements entered into between the parties and develop processes under RCW 51.28.070 to furnish copies of such agreements to any party contemplating any subsequent voluntary settlement agreement with the worker on any claim. The department must also furnish claims histories that include all prior permanent disability awards received by the worker on any claims by body part and category or percentage rating, as applicable. Copies of such agreements and claims histories must be furnished within ten working days of a written request. An employer may not consider a prior settlement agreement or claims history when making a decision about hiring or the terms or conditions of employment.

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

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

**Sec.**  RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) ((~~shall apply~~))applies, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury ((~~shall be~~))is payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

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

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

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

(b) No compensation ((~~shall~~))may be payable under this subsection (3) unless the loss of earning power ((~~shall~~)) exceeds five percent.

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

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

(b) ((~~Whenever~~)) The employer of injury ((~~requests that~~)) may provide light duty or transitional work to a worker who is entitled to temporary total disability under this chapter ((~~be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work,~~)). The employer or the department must obtain from the physician or licensed advanced registered nurse practitioner a statement confirming the light duty or transitional work is consistent with the worker's medical restrictions related to the injury. This statement should be obtained before the start of the light duty or transitional work unless the worker has already returned to work with the employer of injury in which case the statement may be obtained following the start date of the job. The employer ((~~shall~~))must furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work ((~~available~~)) with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner ((~~shall then determine~~)) must confirm whether the worker is physically able to perform the work described. The worker's temporary total disability payments ((~~shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If~~)) must stop effective the date the light duty or transitional job starts. Temporary total disability payments resume if the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury((~~, the worker's temporary total disability payments shall be resumed~~)). Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments ((~~shall~~))must be resumed when the worker ceases such work at the direction of the physician or licensed advanced registered nurse practitioner.

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

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

(e) If an employer insured with the department offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer ((~~shall be~~))is eligible for reimbursement for such clothing from the department, up to a maximum of four hundred dollars. However, an employer ((~~shall~~))may not receive reimbursement for any clothing it provided to the worker that it normally provides to its workers. The clothing purchased for the worker ((~~shall~~)) becomes the worker's property once the work comes to an end.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (9)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker ((~~shall~~))must be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

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

(11) The department ((~~shall~~))must adopt rules as necessary to implement this section.

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

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 51.04.063 (Injured worker options—Claim resolution structured settlement agreements) and 2014 c 142 s 2, 2013 c 23 s 104, & 2011 1st sp.s. c 37 s 302;

(2) RCW 51.04.065 (Claim resolution structured settlement agreements—Availability of copies) and 2011 1st sp.s. c 37 s 303; and

(3) RCW 51.04.069 (Claim resolution structured settlement agreements—Reports and studies) and 2011 1st sp.s. c 37 s 306.

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