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**SENATE BILL 5822**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Baumgartner, Braun, Rossi, Sheldon, Angel, Becker, Wilson, Schoesler, Bailey, Ericksen, Warnick, King, Honeyford, Brown, Padden, Short, Fain, O'Ban, Hawkins, Zeiger, and Rivers

AN ACT Relating to improving workers' compensation system costs and administration and worker outcomes through modification of procedures for claims to self-insureds, clarification of recovery in third-party legal actions, clarification of occupational disease claims, and lowering age barriers for structured settlements; amending RCW 51.24.030, 51.24.050, 51.24.060, 51.08.140, 51.32.180, 51.28.055, 51.04.063, and 51.14.130; and creating new sections.

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

NEW SECTION. **Sec.**  (1) The legislature finds that while significant changes were made to Washington's workers' compensation system in 2011, premium rates and claim costs charged to employers continue to increase, the department of labor and industries' financial reserves for short-term and long-term disability payments continue to fall short of established ranges, and injured workers continue to experience durations and incidences of short-term and long-term disability at rates that far exceed national averages. Because the state must ensure that the workers' compensation system remains financially healthy in order to provide needed resources for injured workers, mitigate costs imposed on employers, and ensure that resources are allocated specifically to work-related injuries and conditions, the legislature intends to adopt a series of targeted reforms to address the costs and administration of workers' compensation while promoting appropriate and productive outcomes for workers.

(2) The legislature finds that a fiscally sound industrial insurance system that assures necessary and proper medical care for persons injured at work is integral to the health and economic well-being of workers and the economic welfare of the state. The legislature further finds that reforms are needed to assure the best worker outcomes, including return to work. Improvements are also needed to assure the most efficient and fair system. According to a 2012 report of the Upjohn institute for employment research, "A Study of Occupational Disease Claims Within Washington's Workers' Compensation System," which was ordered by the legislature in 2011, occupational disease claims are an increasing percentage of overall claims in Washington, result in significantly higher costs per claim, and are comparatively more likely to result in an adjudication of total permanent disability. Given the higher frequency and severity of occupational disease claims and the gradual loosening through decades of court decisions of the legislature's original intent that the workers' compensation system will only be responsible for costs due to workplace injuries, the legislature intends to clarify the standards for occupational disease coverage and provide injured workers a clear time period in which an occupational disease claim must be filed.

(3) The legislature finds the availability of claim resolution structured settlement agreements, as adopted in 2011, creates an important option for resolving the nonmedical portion of appropriate claims. Further, as demonstrated in a 2016 report of the Upjohn institute for employment research, "A Study of Claim Resolution Structured Settlement Agreements," ordered by the legislature in 2011, injured workers who exercised this option during the study period reported excellent outcomes and satisfaction with their settlement. Further, the study documented that there have been no unintended adverse consequences to workers from the adoption of claim resolution structured settlement agreements in Washington. However, many fewer claims than the department of labor and industries originally estimated have been settled, resulting in an increase in the department's liabilities for long-term disability claims. In order to make this option available to more injured workers in appropriate claims, the legislature hereby intends to reduce the age restriction originally placed upon eligibility for the program.

(4) According to joint legislative audit and review committee performance audits of the Washington workers' compensation system (1998) and claims management processes (2015), the department of labor and industries' current position as a readjudicator of duplicative claims management decisions made by self-insured employers results in substantial delay in issuing final decisions, increased claims cost, and lack of clear communication to injured workers for no productive reason. The committee noted most recently in 2015 that for orders allowing a claim, the department agrees with a self-insured employer ninety-nine percent of the time, and ninety-eight percent of the time for orders denying a claim, yet department readjudication of the decision adds up to forty days of delay to the process. In the meantime, the department has developed a new audit and accountability system for self-insured employers for compliance with all claim and benefit rules and regulations. In light of these developments and to align with the past recommendations of the committee, the legislature intends that the department's role in the management of claims by self-insured employers transition from readjudication to accountability oversight, first with respect to the allowance and denial of claims and by January 1, 2019, with respect to all claims management decisions.

**Sec.**  RCW 51.24.030 and 1995 c 199 s 2 are each amended to read as follows:

(1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

(5) For the purposes of this chapter, "recovery" includes all economic and noneconomic damages except loss of consortium.

**Sec.**  RCW 51.24.050 and 1995 c 199 s 3 are each amended to read as follows:

(1) An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

(2) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(3) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(4) Any recovery made by the department or self-insurer shall be distributed as follows:

(a) The department or self-insurer shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (5) of this section: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid ((~~the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer~~)) from the remaining recovery balance the amount it paid to or on behalf of the injured worker or beneficiary in benefits; and

(d) The injured worker or beneficiary shall be paid any remaining balance.

(5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(6) When the cause of action has been assigned to the self-insurer and compensation and benefits have been paid and/or are payable from state funds for the same injury:

(a) The prosecution of such cause of action shall also be for the benefit of the department to the extent of compensation and benefits paid and payable from state funds;

(b) Any compromise or settlement of such cause of action which results in less than the entitlement under this title is void unless made with the written approval of the department;

(c) The department shall be reimbursed for compensation and benefits paid from state funds;

(d) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the self-insurer in obtaining the award or settlement; and

(e) Any remaining balance under subsection (4)(d) of this section shall be applied, under subsection (5) of this section, to reduce the obligations of the department and self-insurer to pay further compensation and benefits in proportion to which the obligations of each bear to the remaining entitlement of the worker or beneficiary.

**Sec.**  RCW 51.24.060 and 2011 c 290 s 4 are each amended to read as follows:

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for ((~~benefits paid~~)) the amount it paid to or on behalf of the injured worker or beneficiary in benefits;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by a method for which receipt can be confirmed or tracked, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by a method for which receipt can be confirmed or tracked; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

NEW SECTION. **Sec.**  (1) Sections 2 through 4 of this act are an explicit restatement of the legislature's original intent to grant the department of labor and industries or a self-insured employer the authority to reimburse itself from a third-party recovery for the amount paid on behalf of the worker or beneficiary for all economic and noneconomic damages except loss of consortium.

(2) Sections 2 through 4 of this act apply to all causes of action commenced on or after the effective date of this section, regardless of when the cause of action arose. To this extent, sections 2 through 4 of this act apply retroactively, but in all other respects they apply prospectively.

**Sec.**  RCW 51.08.140 and 1961 c 23 s 51.08.140 are each amended to read as follows:

(1) "Occupational disease" means such disease or infection as arises ((~~naturally and proximately~~)) out of and in the course of the particular employment under ((~~the mandatory or elective adoption provisions of~~)) this title in which the worker is exposed to such disease or infection and which meets all of the following criteria:

(a) The disease or infection is proximately caused by the distinctive conditions under which the work is performed and risk of exposure inherent therein;

(b) The disease or infection arose as a natural incident of the employment-related exposure;

(c) The worker would not have ordinarily been exposed to the disease or infection outside of his or her employment; and

(d) The disease or infection is not an ordinary condition of life to which the general public is exposed without regard to employment.

(2) For the purposes of this section, "proximate cause" means that cause which, in a direct sequence, unbroken by any new, independent cause, produces the disease or infection, and without which the disease or infection would not have occurred.

**Sec.**  RCW 51.32.180 and 1988 c 161 s 5 are each amended to read as follows:

Every worker who suffers disability from an occupational disease arising out of and in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, ((~~shall~~)) must receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title, except as follows: ((~~(a) [(1)]~~)) (1) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and ((~~(b) [(2)]~~)) (2) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases ((~~shall~~)) must be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim.

**Sec.**  RCW 51.28.055 and 2004 c 65 s 7 are each amended to read as follows:

(1) ((~~Except as provided in subsection (2) of this section for claims filed for occupational hearing loss, claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician or a licensed advanced registered nurse practitioner: (a) Of the existence of his or her occupational disease, and (b) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician or licensed advanced registered nurse practitioner shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease.~~)) To be valid and compensable, claims for occupational disease or infection must be filed within one year following the earliest of the following dates:

(a) The date the disease or infection was first diagnosed;

(b) The date the worker first received treatment for symptoms of the disease or infection from any health services provider; or

(c) The date the worker was first partially or fully restricted from work due to the disease or infection.

(2)((~~(a) Except as provided in (b) of this subsection,~~)) To be valid and compensable, claims for hearing loss due to occupational noise exposure must be filed within two years of the date of the worker's last injurious exposure to occupational noise in employment covered under this title ((~~or within one year of September 10, 2003, whichever is later.~~

~~(b) A claim for hearing loss due to occupational noise exposure that is not timely filed under (a) of this subsection can only be allowed for medical aid benefits under chapter 51.36 RCW~~)).

(3) The department may adopt rules to implement this section.

**Sec.**  RCW 51.04.063 and 2014 c 142 s 2 are each amended to read as follows:

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

(2)(a) As provided in this section, the parties to an allowed claim may initiate and agree to resolve a claim with a structured settlement for all benefits other than medical. Parties as defined in (b) of this subsection may only initiate claim resolution structured settlements if 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. All requirements of this title regarding entitlement to and payment of benefits will apply during this period. All claim resolution structured settlement agreements must be approved by the board of industrial insurance appeals.

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

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

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

(c) The claim resolution structured settlement agreements ((~~shall~~)) must:

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

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

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

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

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

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

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or his or her representative. Workers of self-insured employers who are unrepresented may request that the office of the ombuds for self-insured injured workers provide assistance or be present during negotiations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If a worker is represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties ((~~shall~~)) must submit the agreement directly to the board without the conference described in this section.

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

(6) A party may revoke consent to the claim resolution structured 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.

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

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

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

(10) Claims closed pursuant to a claim resolution structured settlement agreement can be reopened pursuant to 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 or claims for which a claim resolution structured settlement agreement has been approved by the board and has become final.

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

(12) Parties and their representatives may not use settlement offers or the claim resolution structured settlement agreement process to harass or coerce any party. If the department determines that an employer has engaged in a pattern of harassment or coercion, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030.

(13) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals, other than final orders from the board of industrial insurance appeals, is private and exempt from disclosure under chapter 42.56 RCW.

(14) Information gathered during the claims resolution structured settlement agreement process, including but not limited to forms filled out by the parties and testimony during a claims resolution structured settlement conference before the board of industrial insurance appeals, is a statement made in the course of compromise negotiations and is inadmissible in any future litigation.

**Sec.**  RCW 51.14.130 and 1993 c 122 s 3 are each amended to read as follows:

(1) For any industrial insurance claim for which the worker may be entitled to benefits other than medical treatment only, when a self-insurer has determined to allow an industrial insurance claim, the self-insurer must issue an order allowing the claim to the injured worker, attending medical provider, and the department within (a) sixty days from the date that the claim is filed or (b) one hundred twenty days from the date that the claim is filed if an order is issued as provided in subsection (3) of this section. The order of the self-insurer must be issued consistent with rules adopted by the department.

(2) The self-insurer ((~~shall~~)) must request ((~~allowance or~~)) denial of a claim within (a) sixty days from the date that the claim is filed or (b) one hundred twenty days from the date that the claim is filed if an order is issued as provided in subsection (3) of this section.

(3) When a self-insurer requires additional time to determine whether to allow or request denial of the claim, the self-insurer must issue an order to the injured worker, attending medical provider, and the department within sixty days from the date that the claim is filed indicating a decision requires additional time to determine whether to allow or request denial of the claim. The order must state the reasons why the self-insurer requires additional time to determine whether to allow or request denial of the claim. During the sixty-day period after this order is issued, the self-insurer must pay temporary disability benefits as entitled if the attending provider certifies that the worker cannot return to work because of the injury or illness provided in the claim, and pay for any medical examination or test required by the self-insurer to determine whether to allow or request denial of the claim. In the event the claim is denied by the department, any temporary disability and other benefits paid may be recovered by the self-insurer in accordance with RCW 51.32.240.

(4) Pending a decision of allowance or denial, temporary disability compensation must be paid in accordance with RCW 51.32.190.

(5) If the self-insurer fails to act within (a) sixty days from the date that the claim is filed or (b) one hundred twenty days from the date that the claim is filed if an order is issued as provided in subsection (3) of this section, the department ((~~shall~~)) must promptly intervene and adjudicate the claim.

NEW SECTION. **Sec.**  On July 1, 2019, notwithstanding any other provision of Title 51 RCW, all responsibility for the issuance of final and binding orders on claims of workers of a self-insured employer shall be vested in the self-insured employer. The department of labor and industries is directed to develop, in consultation with representatives of self-insured employers, a model that provides for full self-insured claims management responsibility while ensuring the department retains appropriate audit and accountability oversight, including standards for worker protest and appeal rights, and employer communications. The department of labor and industries shall report back to the appropriate committees of the legislature by December 1, 2018, should any amendments to Title 51 RCW be necessary to implement this section.

NEW SECTION. **Sec.**  The department of labor and industries is authorized to adopt rules as necessary to implement sections 10 and 11 of this act to include the form of orders allowing industrial insurance claims consistent with the standards followed by the department.

**--- END ---**