
HOUSE BILL 2409

State of Washington

66th Legislature

2020 Regular Session

By Representatives Kilduff, Pollet, Sells, Gregerson, Valdez, and Ormsby

Read first time 01/14/20. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to industrial insurance employer penalties,
2 duties, and the licensing of third-party administrators; amending RCW
3 51.48.010, 51.48.017, 51.48.030, 51.48.040, 51.48.060, and 51.48.080;
4 adding new sections to chapter 51.48 RCW; adding a new section to
5 chapter 51.14 RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 51.48.010 and 1985 c 347 s 2 are each amended to
8 read as follows:

9 Every employer shall be liable for the penalties described in
10 this title and may also be liable if an injury or occupational
11 disease has been sustained by a worker prior to the time he or she
12 has secured the payment of such compensation to a penalty in a sum
13 not less than fifty percent nor more than one hundred percent of the
14 cost for such injury or occupational disease. Any employer who has
15 failed to secure payment of compensation for his or her workers
16 covered under this title may also be liable to a maximum penalty in a
17 sum of ((five)) one thousand seven hundred dollars or in a sum double
18 the amount of premiums incurred prior to securing payment of
19 compensation under this title, whichever is greater, for the benefit
20 of the medical aid fund.

1 **Sec. 2.** RCW 51.48.017 and 2010 c 8 s 14011 are each amended to
2 read as follows:

3 (~~if~~) Every time a self-insurer unreasonably delays or refuses
4 to pay benefits as they become due there shall be paid by the self-
5 insurer (~~upon order of the director~~) an additional amount equal to
6 (~~five~~) one thousand seven hundred dollars or twenty-five percent of
7 the amount then due, whichever is greater, per each act of
8 unreasonable delay by the self-insurer, which shall accrue for the
9 benefit of the claimant and shall be paid to him or her with the
10 benefits which may be assessed under this title. The director shall
11 issue an order determining whether there was an unreasonable delay or
12 refusal to pay benefits and the penalty amount owed within thirty
13 days upon the request of the claimant. Such an order shall conform to
14 the requirements of RCW 51.52.050.

15 **Sec. 3.** RCW 51.48.030 and 1986 c 9 s 8 are each amended to read
16 as follows:

17 Every employer who fails to keep and preserve the records
18 required by this title or fails to make the reports provided in this
19 title shall be subject to a penalty determined by the director but
20 not to exceed (~~two~~) eight hundred fifty dollars or two hundred
21 percent of the quarterly tax for each such offense, whichever is
22 greater. Any employer who fails to keep and preserve the records
23 adequate to determine taxes due shall be forever barred from
24 questioning, in an appeal before the board of industrial insurance
25 appeals or the courts, the correctness of any assessment by the
26 department based on any period for which such records have not been
27 kept and preserved.

28 **Sec. 4.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to
29 read as follows:

30 (1) The books, records and payrolls of the employer pertinent to
31 the administration of this title shall always be open to inspection
32 by the department or its traveling auditor, agent or assistant, for
33 the purpose of ascertaining the correctness of the payroll, the
34 persons employed, and such other information as may be necessary for
35 the department and its management under this title.

36 (2) Refusal on the part of the employer to submit his or her
37 books, records and payrolls for such inspection to the department, or
38 any assistant presenting written authority from the director, shall

1 subject the offending employer to a penalty determined by the
2 director but not to exceed (~~two~~) eight hundred fifty dollars for
3 each offense and the individual who personally gives such refusal is
4 guilty of a misdemeanor.

5 (3) Any employer who fails to allow adequate inspection in
6 accordance with the requirements of this section is subject to having
7 its certificate of coverage revoked by order of the department and is
8 forever barred from questioning in any proceeding in front of the
9 board of industrial insurance appeals or any court, the correctness
10 of any assessment by the department based on any period for which
11 such records have not been produced for inspection.

12 **Sec. 5.** RCW 51.48.060 and 2004 c 65 s 14 are each amended to
13 read as follows:

14 Any physician or licensed advanced registered nurse practitioner
15 who fails, neglects or refuses to file a report with the director, as
16 required by this title, within five days of the date of treatment,
17 showing the condition of the injured worker at the time of treatment,
18 a description of the treatment given, and an estimate of the probable
19 duration of the injury, or who fails or refuses to render all
20 necessary assistance to the injured worker, as required by this
21 title, shall be subject to a civil penalty determined by the director
22 but not to exceed (~~two~~) eight hundred fifty dollars.

23 **Sec. 6.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to
24 read as follows:

25 Every person, firm or corporation who violates or fails to obey,
26 observe or comply with any statutory provision of this title or rule
27 of the department promulgated under authority of this title, shall be
28 subject to a penalty of not to exceed (~~five~~) one thousand seven
29 hundred dollars.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.48
31 RCW to read as follows:

32 The minimum penalties payable pursuant to this chapter shall be
33 adjusted every July 1st by the percentage change in the average
34 monthly wage in the state under RCW 51.08.018 for the preceding
35 calendar year, rounded to the nearest whole cent.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 51.48
2 RCW to read as follows:

3 (1) All employers and employers' lay representatives have a
4 fiduciary duty to workers of good faith and fair dealing relating to
5 all aspects of this title.

6 (2) An employer violates its fiduciary duty to the worker if it
7 or its representative persuades a worker to accept less than the
8 compensation due under this title, induces or coerces a worker who is
9 entitled to temporary total disability benefits under this title to
10 return to work in contravention of RCW 51.32.090(4), or otherwise
11 fails to act in good faith regarding its obligations under this
12 title. The department shall adopt by rule additional applications of
13 the duty of good faith and fair dealing as well as criteria for
14 determining appropriate penalties for violation of its duties. In
15 adopting a rule under this subsection, the department shall consider,
16 among other factors, recognized and approved claim processing
17 practices within the insurance industry, the department's own
18 experience, and the industrial insurance and insurance laws and rules
19 of this state.

20 (3) The department shall investigate each alleged violation of
21 this section upon the filing of a written complaint or upon its own
22 motion. The department shall require the employer or its
23 representative to file a written, substantive response and such
24 response shall be due within fifteen working days of the department's
25 request. A department order determining whether a violation has
26 occurred and conforming with RCW 51.52.050 shall be issued within
27 thirty days of a request for an investigation. An order finding that
28 a violation of subsection (2) of this section has occurred shall also
29 order the employer to pay a penalty of one to ten times the average
30 weekly wage at the time of the order, depending upon the severity of
31 the violation, which accrues for the benefit of the worker.

32 NEW SECTION. **Sec. 9.** A new section is added to chapter 51.14
33 RCW to read as follows:

34 (1) Self-insured employers may elect to have their claims
35 administered by a third party or they may elect to self-administer
36 their claims. Regardless of which method of claims administration
37 chosen by self-insured employers, persons, and businesses who are
38 given the responsibility of administering the claims of workers shall
39 be licensed by the department.

1 (2) The department shall adopt rules to administer this section.

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