
SENATE BILL 5137

State of Washington

67th Legislature

2021 Regular Session

By Senators King, Dozier, Gildon, Honeyford, Muzzall, Short, and Wagoner

Prefiled 01/08/21. Read first time 01/11/21. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to suspending workers' compensation cost-of-
2 living adjustments for fiscal year 2022, changing the basis of
3 certain future adjustments to the consumer price index, and capping
4 the rate of increase for future adjustments; and amending RCW
5 51.32.072, 51.32.075, 51.32.090, and 51.08.018.

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

7 **Sec. 1.** RCW 51.32.072 and 2011 1st sp.s. c 37 s 201 are each
8 amended to read as follows:

9 (1) Notwithstanding any other provision of law, every surviving
10 spouse and every permanently totally disabled worker or temporarily
11 totally disabled worker, if such worker was unmarried at the time of
12 the worker's injury or was then married but the marriage was later
13 terminated by judicial action, receiving a pension or compensation
14 for temporary total disability under this title pursuant to
15 compensation schedules in effect prior to July 1, 1971, shall after
16 July 1, 1975, through June 30, 2011, be paid fifty percent of the
17 average monthly wage in the state as computed under RCW 51.08.018 per
18 month and an amount equal to five percent of such average monthly
19 wage per month to such totally disabled worker if married at the time
20 of the worker's injury and the marriage was not later terminated by
21 judicial action, and an additional two percent of such average

1 monthly wage for each child of such totally disabled worker at the
2 time of injury in the legal custody of such totally disabled worker
3 or such surviving spouse up to a maximum of five such children. The
4 monthly payments such surviving spouse or totally disabled worker are
5 receiving pursuant to compensation schedules in effect prior to July
6 1, 1971 shall be deducted from the monthly payments above specified.

7 Where such a surviving spouse has remarried, or where any such
8 child of such worker, whether living or deceased, is not in the legal
9 custody of such worker or such surviving spouse there shall be paid
10 for the benefit of and on account of each such child a sum equal to
11 two percent of such average monthly wage up to a maximum of five such
12 children in addition to any payments theretofore paid under
13 compensation schedules in effect prior to July 1, 1971 for the
14 benefit of and on account of each such child. In the case of any
15 child or children of a deceased worker not leaving a surviving spouse
16 or where the surviving spouse has later died, there shall be paid for
17 the benefit of and on account of each such child a sum equal to two
18 percent of such average monthly wage up to a maximum of five such
19 children in addition to any payments theretofore paid under such
20 schedules for the benefit of and on account of each such child.

21 If the character of the injury or occupational disease is such as
22 to render the worker so physically helpless as to require the hiring
23 of the services of an attendant, the department shall make monthly
24 payments to such attendant for such services as long as such
25 requirement continues but such payments shall not obtain or be
26 operative while the worker is receiving care under or pursuant to the
27 provisions of this title except for care granted at the discretion of
28 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such
29 payments shall not be considered compensation nor shall they be
30 subject to any limitation upon total compensation payments.

31 No part of such additional payments shall be payable from the
32 accident fund.

33 The director shall pay monthly from the supplemental pension fund
34 such an amount as will, when added to the compensation theretofore
35 paid under compensation schedules in effect prior to July 1, 1971,
36 equal the amounts hereinabove specified.

37 In cases where money has been or shall be advanced to any such
38 person from the pension reserve, the additional amount to be paid
39 under this section shall be reduced by the amount of monthly pension

1 which was or is predicated upon such advanced portion of the pension
2 reserve.

3 (2) In addition to the adjustment under subsection (1) of this
4 section, further adjustments shall be made beginning July 1, 2012,
5 and on each July 1st thereafter(~~(.The))~~ through June 30, 2021; the
6 adjustment shall be the percentage change in the average monthly wage
7 in the state under RCW 51.08.018 for the preceding calendar year,
8 rounded to the nearest whole cent. Further adjustments made beginning
9 July 1, 2022, shall be the percentage change in the consumer price
10 index for the preceding calendar year, not to exceed three percent.
11 For purposes of this subsection, "consumer price index" means the
12 consumer price index for the Seattle, Washington area for urban wage
13 earners and clerical workers, all items, compiled by the bureau of
14 labor statistics, United States department of labor.

15 (3) Compensation due for July 1, 2011, through June 30, 2012,
16 must be paid based on the average monthly wage in the state as
17 computed under RCW 51.08.018 on July 1, 2010. Compensation due for
18 July 1, 2021, through June 30, 2022, must be paid based on the
19 average monthly wage in the state as computed under RCW 51.08.018 on
20 July 1, 2020.

21 **Sec. 2.** RCW 51.32.075 and 2011 1st sp.s. c 37 s 202 are each
22 amended to read as follows:

23 The compensation or death benefits payable pursuant to the
24 provisions of this chapter for temporary total disability, permanent
25 total disability, or death arising out of injuries or occupational
26 diseases shall be adjusted as follows:

27 (1) On July 1, 1982, there shall be an adjustment for those whose
28 right to compensation was established on or after July 1, 1971, and
29 before July 1, 1982. The adjustment shall be determined by
30 multiplying the amount of compensation to which they are entitled by
31 a fraction, the denominator of which shall be the average monthly
32 wage in the state under RCW 51.08.018 for the fiscal year in which
33 such person's right to compensation was established, and the
34 numerator of which shall be the average monthly wage in the state
35 under RCW 51.08.018 on July 1, 1982.

36 (2) In addition to the adjustment established by subsection (1)
37 of this section, there shall be another adjustment on July 1, 1983,
38 for those whose right to compensation was established on or after
39 July 1, 1971, and before July 1983, which shall be determined by

1 multiplying the amount of compensation to which they are entitled by
2 a fraction, the denominator of which shall be the average monthly
3 wage in the state under RCW 51.08.018 for the fiscal year in which
4 such person's right to compensation was established, and the
5 numerator of which shall be the average monthly wage in the state
6 under RCW 51.08.018 on July 1, 1983.

7 (3) In addition to the adjustments under subsections (1) and (2)
8 of this section, further adjustments shall be made beginning on July
9 1, 1984, and on each July 1st thereafter through July 1, 2010, for
10 those whose right to compensation was established on or after July 1,
11 1971. The adjustment shall be determined by multiplying the amount of
12 compensation to which they are entitled by a fraction, the
13 denominator of which shall be the average monthly wage in the state
14 under RCW 51.08.018 for the fiscal year in which such person's right
15 to compensation was established, and the numerator of which shall be
16 the average monthly wage in the state under RCW 51.08.018 on July 1st
17 of the year in which the adjustment is being made. The department or
18 self-insurer shall adjust the resulting compensation rate to the
19 nearest whole cent, not to exceed the average monthly wage in the
20 state as computed under RCW 51.08.018.

21 (4) In addition to the adjustments under subsections (1), (2),
22 and (3) of this section, for those whose right to compensation was
23 established on or after July 1, 1971, further adjustments shall be
24 made beginning July 1, 2012, and on each July 1st thereafter (~~for~~
25 ~~those whose right to compensation was established on or after July 1,~~
26 ~~1971. The~~) through June 30, 2021, and the adjustment shall be the
27 percentage change in the average monthly wage in the state under RCW
28 51.08.018 for the preceding calendar year, rounded to the nearest
29 whole cent. Further adjustments made beginning July 1, 2022, shall be
30 the percentage change in the consumer price index for the preceding
31 calendar year, not to exceed three percent. For purposes of this
32 subsection, "consumer price index" means the consumer price index for
33 the Seattle, Washington area for urban wage earners and clerical
34 workers, all items, compiled by the bureau of labor statistics,
35 United States department of labor.

36 (5) For claims whose right to compensation was established on or
37 after July 1, 2011, no adjustment shall be made under this subsection
38 until the second July 1st following the date of injury or
39 occupational disease manifestation.

1 **Sec. 3.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
2 amended to read as follows:

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

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

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

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

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

29 (b) No compensation shall be payable under this subsection (3)
30 unless the loss of earning power shall exceed five percent.

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

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

1 (b) Whenever the employer of injury requests that a worker who is
2 entitled to temporary total disability under this chapter be
3 certified by a physician or licensed advanced registered nurse
4 practitioner as able to perform available work other than his or her
5 usual work, the employer shall furnish to the physician or licensed
6 advanced registered nurse practitioner, with a copy to the worker, a
7 statement describing the work available with the employer of injury
8 in terms that will enable the physician or licensed advanced
9 registered nurse practitioner to relate the physical activities of
10 the job to the worker's disability. The physician or licensed
11 advanced registered nurse practitioner shall then determine whether
12 the worker is physically able to perform the work described. The
13 worker's temporary total disability payments shall continue until the
14 worker is released by his or her physician or licensed advanced
15 registered nurse practitioner for the work, and begins the work with
16 the employer of injury. If the work thereafter comes to an end before
17 the worker's recovery is sufficient in the judgment of his or her
18 physician or licensed advanced registered nurse practitioner to
19 permit him or her to return to his or her usual job, or to perform
20 other available work offered by the employer of injury, the worker's
21 temporary total disability payments shall be resumed. Should the
22 available work described, once undertaken by the worker, impede his
23 or her recovery to the extent that in the judgment of his or her
24 physician or licensed advanced registered nurse practitioner he or
25 she should not continue to work, the worker's temporary total
26 disability payments shall be resumed when the worker ceases such
27 work.

28 (c) To further encourage employers to maintain the employment of
29 their injured workers, an employer insured with the department and
30 that offers work to a worker pursuant to this subsection (4) shall be
31 eligible for reimbursement of the injured worker's wages for light
32 duty or transitional work equal to fifty percent of the basic, gross
33 wages paid for that work, for a maximum of sixty-six workdays within
34 a consecutive twenty-four month period. In no event may the wage
35 subsidies paid to an employer on a claim exceed ten thousand dollars.
36 Wage subsidies shall be calculated using the worker's basic hourly
37 wages or basic salary, and no subsidy shall be paid for any other
38 form of compensation or payment to the worker such as tips,
39 commissions, bonuses, board, housing, fuel, health care, dental care,
40 vision care, per diem, reimbursements for work-related expenses, or

1 any other payments. An employer may not, under any circumstances,
2 receive a wage subsidy for a day in which the worker did not actually
3 perform any work, regardless of whether or not the employer paid the
4 worker wages for that day.

5 (d) If an employer insured with the department offers a worker
6 work pursuant to this subsection (4) and the worker must be provided
7 with training or instruction to be qualified to perform the offered
8 work, the employer shall be eligible for a reimbursement from the
9 department for any tuition, books, fees, and materials required for
10 that training or instruction, up to a maximum of one thousand
11 dollars. Reimbursing an employer for the costs of such training or
12 instruction does not constitute a determination by the department
13 that the worker is eligible for vocational services authorized by RCW
14 51.32.095 and 51.32.099.

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

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

35 (g) An employer may offer work to a worker pursuant to this
36 subsection (4) more than once, but in no event may the employer
37 receive wage subsidies for more than sixty-six days of work in a
38 consecutive twenty-four month period under one claim. An employer may
39 continue to offer work pursuant to this subsection (4) after the

1 worker has performed sixty-six days of work, but the employer shall
2 not be eligible to receive wage subsidies for such work.

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

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

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

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

36 (l) In the event of any dispute as to the validity of the work
37 offered or as to the worker's ability to perform the available work
38 offered by the employer, the department shall make the final
39 determination pursuant to an order that contains the notice required

1 by RCW 51.52.060 and that is subject to appeal subject to RCW
2 51.52.050.

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

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

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

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

27 (9) In no event shall the monthly payments provided in this
28 section:

29 (a) (i) Exceed the applicable percentage of the average monthly
30 wage in the state as computed under the provisions of RCW 51.08.018
31 as follows:

	AFTER	PERCENTAGE
32		
33	June 30, 1993	105%
34	June 30, 1994	110%
35	June 30, 1995	115%
36	June 30, 1996	120%

1 (ii) For payments made from July 1, 2021, to June 30, 2022, the
2 applicable percentage shall be applied to the average monthly wage as
3 computed on July 1, 2020.

4 (b) For purposes of this section, beginning July 1, 2021, annual
5 increases in the average monthly wage in the state as computed under
6 RCW 51.08.018 shall not exceed three percent.

7 (c) For dates of injury or disease manifestation after July 1,
8 2008, be less than fifteen percent of the average monthly wage in the
9 state as computed under RCW 51.08.018 plus an additional ten dollars
10 per month if the worker is married and an additional ten dollars per
11 month for each child of the worker up to a maximum of five children.
12 However, if the monthly payment computed under this subsection (9)
13 ((~~b~~)) (c) is greater than one hundred percent of the wages of the
14 worker as determined under RCW 51.08.178, the monthly payment due to
15 the worker shall be equal to the greater of the monthly wages of the
16 worker or the minimum benefit set forth in this section on June 30,
17 2008.

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

21 (11) The department shall adopt rules as necessary to implement
22 this section.

23 **Sec. 4.** RCW 51.08.018 and 1977 ex.s. c 323 s 3 are each amended
24 to read as follows:

25 For purposes of this title, except for the cap on annual
26 increases set forth in RCW 51.32.090, the average monthly wage in the
27 state shall be the average annual wage as determined under RCW
28 50.04.355 as now or hereafter amended divided by twelve.

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