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SENATE BILL 5835

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State of Washington

67th Legislature

2022 Regular Session

By Senators Saldaña, Keiser, Nguyen, Nobles, Stanford, and C. Wilson

Read first time 01/12/22. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to workers' compensation; amending RCW 51.32.060  
2 and 51.32.090; and providing an effective date.

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

4 **Sec. 1.** RCW 51.32.060 and 2007 c 284 s 2 are each amended to  
5 read as follows:

6 (1) When the supervisor of industrial insurance shall determine  
7 that permanent total disability results from the injury, the worker  
8 shall receive monthly during the period of such disability:

9 (a) ~~((If married at the time of injury, sixty-five percent of his  
10 or her~~ Sixty-five percent of the worker's wages.

11 (b) If ~~((married with))~~ the worker has one child at the time of  
12 injury, ~~((sixty-seven))~~ 67 percent of ~~((his or her))~~ the worker's  
13 wages.

14 (c) If ~~((married with))~~ the worker has two children at the time  
15 of injury, ~~((sixty-nine))~~ 69 percent of ~~((his or her))~~ the worker's  
16 wages.

17 (d) If ~~((married with))~~ the worker has three children at the time  
18 of injury, ~~((seventy-one))~~ 71 percent of ~~((his or her))~~ the worker's  
19 wages.

1 (e) If (~~married with~~) the worker has four children at the time  
2 of injury, (~~seventy-three~~) 73 percent of (~~his or her~~) the  
3 worker's wages.

4 (f) If (~~married with~~) the worker has five or more children at  
5 the time of injury, (~~seventy-five~~) 75 percent of (~~his or her~~) the  
6 worker's wages.

7 (~~(g) If unmarried at the time of the injury, sixty percent of~~  
8 ~~his or her wages.~~

9 (~~(h) If unmarried with one child at the time of injury, sixty-two~~  
10 ~~percent of his or her wages.~~

11 (~~(i) If unmarried with two children at the time of injury, sixty-~~  
12 ~~four percent of his or her wages.~~

13 (~~(j) If unmarried with three children at the time of injury,~~  
14 ~~sixty-six percent of his or her wages.~~

15 (~~(k) If unmarried with four children at the time of injury, sixty-~~  
16 ~~eight percent of his or her wages.~~

17 (~~(l) If unmarried with five or more children at the time of~~  
18 ~~injury, seventy percent of his or her wages.))~~

19 (2) For any period of time where both (~~husband and wife~~)  
20 spouses are entitled to compensation as temporarily or totally  
21 disabled workers, only that spouse having the higher wages of the two  
22 shall be entitled to claim their child or children for compensation  
23 purposes.

24 (3) In case of permanent total disability, if the character of  
25 the injury is such as to render the worker so physically helpless as  
26 to require the hiring of the services of an attendant, the department  
27 shall make monthly payments to such attendant for such services as  
28 long as such requirement continues, but such payments shall not  
29 obtain or be operative while the worker is receiving care under or  
30 pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

31 (4) Should any further accident result in the permanent total  
32 disability of an injured worker, (~~he or she~~) the worker shall  
33 receive the pension to which (~~he or she~~) the worker would be  
34 entitled, notwithstanding the payment of a lump sum for (~~his or~~  
35 ~~her~~) the worker's prior injury.

36 (5) In no event shall the monthly payments provided in this  
37 section:

38 (a) Exceed the applicable percentage of the average monthly wage  
39 in the state as computed under the provisions of RCW 51.08.018 as  
40 follows:

	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%

6 (b) For dates of injury or disease manifestation after July 1,  
7 2008, be less than fifteen percent of the average monthly wage in the  
8 state as computed under RCW 51.08.018 plus an additional ten dollars  
9 per month (~~(if a worker is married)~~) and an additional ten dollars  
10 per month for each child of the worker up to a maximum of five  
11 children. However, if the monthly payment computed under this  
12 subsection (5)(b) is greater than one hundred percent of the wages of  
13 the worker as determined under RCW 51.08.178, the monthly payment due  
14 to the worker shall be equal to the greater of the monthly wages of  
15 the worker or the minimum benefit set forth in this section on June  
16 30, 2008.

17 The limitations under this subsection shall not apply to the  
18 payments provided for in subsection (3) of this section.

19 (6) In the case of new or reopened claims, if the supervisor of  
20 industrial insurance determines that, at the time of filing or  
21 reopening, the worker is voluntarily retired and is no longer  
22 attached to the workforce, benefits shall not be paid under this  
23 section.

24 (7) The benefits provided by this section are subject to  
25 modification under RCW 51.32.067.

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

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

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

36 (3)(a) As soon as recovery is so complete that the present  
37 earning power of the worker, at any kind of work, is restored to that

1 existing at the time of the occurrence of the injury, the payments  
2 shall cease. If and so long as the present earning power is only  
3 partially restored, the payments shall:

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

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

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

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

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

28 (b) Whenever the employer of injury requests that a worker who is  
29 entitled to temporary total disability under this chapter be  
30 certified by a physician or licensed advanced registered nurse  
31 practitioner as able to perform available work other than his or her  
32 usual work, the employer shall furnish to the physician or licensed  
33 advanced registered nurse practitioner, with a copy to the worker, a  
34 statement describing the work available with the employer of injury  
35 in terms that will enable the physician or licensed advanced  
36 registered nurse practitioner to relate the physical activities of  
37 the job to the worker's disability. The physician or licensed  
38 advanced registered nurse practitioner shall then determine whether  
39 the worker is physically able to perform the work described. The  
40 worker's temporary total disability payments shall continue until the

1 worker is released by his or her physician or licensed advanced  
2 registered nurse practitioner for the work, and begins the work with  
3 the employer of injury. If the work thereafter comes to an end before  
4 the worker's recovery is sufficient in the judgment of his or her  
5 physician or licensed advanced registered nurse practitioner to  
6 permit him or her to return to his or her usual job, or to perform  
7 other available work offered by the employer of injury, the worker's  
8 temporary total disability payments shall be resumed. Should the  
9 available work described, once undertaken by the worker, impede his  
10 or her recovery to the extent that in the judgment of his or her  
11 physician or licensed advanced registered nurse practitioner he or  
12 she should not continue to work, the worker's temporary total  
13 disability payments shall be resumed when the worker ceases such  
14 work.

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

32 (d) If an employer insured with the department offers a worker  
33 work pursuant to this subsection (4) and the worker must be provided  
34 with training or instruction to be qualified to perform the offered  
35 work, the employer shall be eligible for a reimbursement from the  
36 department for any tuition, books, fees, and materials required for  
37 that training or instruction, up to a maximum of one thousand  
38 dollars. Reimbursing an employer for the costs of such training or  
39 instruction does not constitute a determination by the department

1 that the worker is eligible for vocational services authorized by RCW  
2 51.32.095 and 51.32.099.

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

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

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

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

1 worker's physician or licensed advanced registered nurse practitioner  
2 has released him or her to perform the work offered.

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

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

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

23 (l) In the event of any dispute as to the validity of the work  
24 offered or as to the worker's ability to perform the available work  
25 offered by the employer, the department shall make the final  
26 determination pursuant to an order that contains the notice required  
27 by RCW 51.52.060 and that is subject to appeal subject to RCW  
28 51.52.050.

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

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

37 (7) No worker shall receive compensation for or during the day on  
38 which injury was received or the three days following the same,  
39 unless his or her disability shall continue for a period of fourteen  
40 consecutive calendar days from date of injury: PROVIDED, That

1 attempts to return to work in the first fourteen days following the  
2 injury shall not serve to break the continuity of the period of  
3 disability if the disability continues fourteen days after the injury  
4 occurs.

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

13 (9) In no event shall the monthly payments provided in this  
14 section:

15 (a) Exceed the applicable percentage of the average monthly wage  
16 in the state as computed under the provisions of RCW 51.08.018 as  
17 follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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23 (b) For dates of injury or disease manifestation after July 1,  
24 2008, be less than fifteen percent of the average monthly wage in the  
25 state as computed under RCW 51.08.018 plus an additional ten dollars  
26 per month (~~if the worker is married~~) and an additional ten dollars  
27 per month for each child of the worker up to a maximum of five  
28 children. However, if the monthly payment computed under this  
29 subsection (9)(b) is greater than one hundred percent of the wages of  
30 the worker as determined under RCW 51.08.178, the monthly payment due  
31 to the worker shall be equal to the greater of the monthly wages of  
32 the worker or the minimum benefit set forth in this section on June  
33 30, 2008.

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

37 (11) The department shall adopt rules as necessary to implement  
38 this section.



1        NEW SECTION.    **Sec. 3.**    This act takes effect January 1, 2023.

--- **END** ---