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**SUBSTITUTE HOUSE BILL 1521**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Bronoske, Stonier, Wylie, Berry, and Pollet)

AN ACT Relating to industrial insurance self-insured employer and third-party administrator penalties and duties; amending RCW 51.48.080 and 51.48.017; adding a new section to chapter 51.14 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

**Sec.**  RCW 51.48.080 and 2020 c 277 s 6 are each amended to read as follows:

(1) Every person, firm, or corporation who violates or fails to obey, observe, or comply with any statutory provision of this ((~~act~~)) title or rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed ((~~one thousand dollars~~)) $1,000.

(2) The department may, for a violation of section 3 of this act, assess a penalty not to exceed three times the penalties provided in subsection (1) of this section, including adjustments pursuant to RCW 51.48.095.

**Sec.**  RCW 51.48.017 and 2020 c 277 s 2 are each amended to read as follows:

(1) Every time a self-insurer unreasonably delays or refuses to pay benefits as they become due, the self-insurer shall pay a penalty not to exceed the greater of ((~~one thousand dollars~~)) $1,000 or ((~~twenty-five~~)) 25 percent of: (a) The amount due or (b) each underpayment made to the claimant. For purposes of this section, "the amount due" means the total amount of payments due at the time of the calculation of the penalty.

(2) In making the determination of the penalty amount, the department shall weigh at least the following factors: The amount of any payment delayed, employer communication of the basis for or calculation of the payment, history or past practice of underpayments by the employer, department orders directing the payment, and any required adjustments to the amount of the payment.

(3) The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits and the penalty amount owed within ((~~thirty~~)) 30 days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050.

(4) The penalty shall accrue for the benefit of the claimant and shall be paid to the claimant with the benefits which may be assessed under this title.

(5) The department may, for a violation of section 3 of this act, assess a penalty not to exceed three times the penalties provided in subsection (1) of this section, including adjustments pursuant to RCW 51.48.095.

(6) This section applies to all requests for penalties made after September 1, 2020.

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

(1) All self-insured employers and third-party administrators have a duty of good faith and fair dealing to workers relating to all aspects of this title.

(2) A self-insured employer or third-party administrator violates its duty to the worker if it coerces a worker to accept less than the compensation due under this title, or otherwise fails to act in good faith and fair dealing regarding its obligations under this title.

(3) The department shall adopt by rule additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violations. In adopting a rule under this subsection, the department shall consider, among other factors, recognized and approved claim processing practices within the insurance industry, the department's own experience, and the industrial insurance and insurance laws and rules of this state.

(4) The department shall investigate each alleged violation of this section upon the filing of a written complaint or upon its own motion. After receiving notice and a request for a response from the department, the employer or the third-party administrator may file a written response within ten working days. If the employer or third-party administrator fails to file a timely response, the department shall issue an order based on available information.

(5) The department shall issue an order determining whether a violation of this section has occurred, in conformance with RCW 51.52.050, within 30 calendar days of receipt of a complete complaint or its own motion. An order finding that a violation has occurred must also order the employer to pay a penalty of one to 52 times the average weekly wage at the time of the order, depending upon the severity of the violation, which accrues for the benefit of the worker.

NEW SECTION. **Sec.**  This act applies to all claims regardless of the date of injury.

NEW SECTION. **Sec.**  This act takes effect July 1, 2024.

**--- END ---**