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**SUBSTITUTE HOUSE BILL 2127**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Schmidt, Berry, Leavitt, Reed, Ormsby, Graham, and Pollet; by request of Department of Labor & Industries)

AN ACT Relating to increasing incentives to return to work in workers' compensation; amending RCW 51.32.090, 51.32.095, 51.32.096, and 51.32.250; and providing an effective date.

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

**Sec.**  RCW 51.32.090 and 2023 c 171 s 7 are each amended to read as follows:

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

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

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

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

(ii) For claims for injuries occurring on or after May 7, 1993, equal ((~~eighty~~)) 80 percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed ((~~one hundred fifty~~)) 150 percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed ((~~one hundred~~)) 100 percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

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

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

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

(b) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by the attending provider as able to perform available work other than his or her usual work, the employer shall furnish to the attending provider, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the attending provider to relate the activities of the job to the worker's disability. The attending provider shall then determine whether the worker is able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her attending provider for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her attending provider to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her attending provider he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(c) To further encourage employers to maintain the employment of their injured workers, an employer insured with the department and that offers work to a worker pursuant to this subsection (4) shall be eligible for reimbursement of the injured worker's wages for light duty or transitional work equal to ((~~fifty~~)) 50 percent of the basic, gross wages paid for that work, for a maximum of ((~~sixty-six~~)) 120 workdays within a consecutive ((~~twenty-four~~)) 24-month period. In no event may the wage subsidies paid to an employer on a claim exceed ((~~ten thousand dollars~~)) $25,000. Wage subsidies shall be calculated using the worker's basic hourly wages or basic salary, and no subsidy shall be paid for any other form of compensation or payment to the worker such as tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments. An employer may not, under any circumstances, receive a wage subsidy for a day in which the worker did not actually perform any work, regardless of whether or not the employer paid the worker wages for that day.

(d) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with training or instruction to be qualified to perform the offered work, the employer shall be eligible for a reimbursement from the department for any tuition, books, fees, and materials required for that training or instruction, up to a maximum of ((~~one thousand dollars~~)) $2,000. Reimbursing an employer for the costs of such training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by RCW 51.32.095 ((~~and 51.32.099~~)).

(e) If an employer insured with the department offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer shall be eligible for reimbursement for such clothing from the department, up to a maximum of ((~~four hundred dollars~~)) $1,000. However, an employer shall not receive reimbursement for any clothing it provided to the worker that it normally provides to its workers. The clothing purchased for the worker shall become the worker's property once the work comes to an end.

(f) If an employer insured with the department offers a worker work pursuant to this subsection (4) and the worker must be provided with tools or equipment to perform the offered work, the employer shall be eligible for a reimbursement from the department for such tools and equipment and related costs as determined by department rule, up to a maximum of ((~~two thousand five hundred dollars~~)) $5,000. An employer shall not be reimbursed for any tools or equipment purchased prior to offering the work to the worker pursuant to this subsection (4). An employer shall not be reimbursed for any tools or equipment that it normally provides to its workers. The tools and equipment shall be the property of the employer.

(g) An employer may offer work to a worker pursuant to this subsection (4) more than once, but in no event may the employer receive wage subsidies for more than ((~~sixty-six~~)) 120 days of work in a consecutive ((~~twenty-four~~)) 24-month period under one claim. An employer may continue to offer work pursuant to this subsection (4) after the worker has performed ((~~sixty-six~~)) 120 days of work, but the employer shall not be eligible to receive wage subsidies for such work.

(h) An employer shall not receive any wage subsidies or reimbursement of any expenses pursuant to this subsection (4) unless the employer has completed and submitted the reimbursement request on forms developed by the department, along with all related information required by department rules. No wage subsidy or reimbursement shall be paid to an employer who fails to submit a form for such payment within one year of the date the work was performed. In no event shall an employer receive wage subsidy payments or reimbursements of any expenses pursuant to this subsection (4) unless the worker's attending provider has restricted him or her from performing his or her usual work and the worker's attending provider has released him or her to perform the work offered.

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

(j) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's attending provider. An employer who directs a claimant to perform work other than that approved by the attending provider and without the approval of the worker's attending provider shall not receive any wage subsidy or other reimbursements for such work.

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

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

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

(6) The department shall create a Washington stay-at-work account which shall be funded by assessments of employers insured through the state fund for the costs of the payments authorized by subsection (4) of this section ((~~and~~)), for the cost of creating a reserve for anticipated liabilities, and for costs authorized in RCW 51.32.095(2). Employers may collect up to one-half the fund assessment from workers.

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

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

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

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

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

(b) For dates of injury or disease manifestation after July 1, 2008, be less than ((~~fifteen~~)) 15 percent of the average monthly wage in the 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~~)) $10 per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (9)(b) is greater than ((~~one hundred~~)) 100 percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

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

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

**Sec.**  RCW 51.32.095 and 2023 c 171 s 8 are each amended to read as follows:

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers must utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection ((~~(5)~~)) (6) of this section ((~~or RCW 51.32.099,~~)) as appropriate. An injured worker may not participate in vocational rehabilitation under this section ((~~or RCW 51.32.099~~)) if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid must be recovered according to the terms of that section.

(2)(a) To help injured workers maintain and build labor market readiness skills during vocational services in the sole discretion of the supervisor or supervisor's designee, funds may be payable to a department-approved training provider as defined by department rule, so that courses may be available for basic skills development.

(b) Participation in basic skills development is optional for the worker.

(c) Funds may pay for but are not limited to:

(i) English language training;

(ii) Basic computer literacy;

(iii) General education development or high school equivalency training;

(iv) Technology or software needed to effectively participate in basic skills development;

(v) Tutoring for approved basic skills training;

(vi) Other skills that prepare an injured worker for gainful employment.

(d) Travel and accommodation expenses are not payable under (c) of this subsection.

(e) These funds are available once per claim equal to 25 percent of the maximum funding available for vocational retraining defined in RCW 51.32.096(4)(d). Use of these funds for basic skills development does not reduce funds that are available for a formal retraining plan.

(i) Funds must be paid directly to training providers or to vendors to procure necessary equipment or assistance, and may not be paid directly to the worker.

(ii) Self-insured employers must pay for the costs of basic skills development for their injured workers independently from this fund.

(f) Eligibility of training for this funding is based upon a recommendation from the assigned vocational rehabilitation counselor, and approval at the sole discretion of the supervisor of industrial insurance or their designee to ensure the proposed training is consistent with basic skills development as used in this section.

(g) The injured worker's knowledge and skills gained through basic skills development may not be construed as acquisition of transferable skills under subsection (3)(f) of this section, and does not disqualify the injured worker from being found eligible for continued vocational rehabilitation services or retraining programs available under this title. Payment for the costs of basic skills training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by this section.

(h) Injured workers may finish specific courses that were approved and paid in full prior to vocational referral closure or claim closure. Otherwise funding for this type of skills development ends when the vocational referral closes or the claim closes.

(i) This funding is not associated in any way with eligibility for temporary total disability benefits or any vocational services.

(j) A worker's eligibility for or participation in basic skills development does not preclude the employer of injury's right to offer work under RCW 51.32.090(4) or to offer work consistent with the priorities identified in subsection (3) of this section.

(3) Vocational rehabilitation services may be provided to an injured worker when in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment. In determining whether to provide vocational services and at what level, the following list must be used, in order of priority with the highest priority given to returning a worker to employment:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer including transitional return to work;

(c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;

(h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining.

((~~(3)~~)) (4) Notwithstanding subsection ((~~(2)~~)) (3) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services under this subsection are not eligible for option 2 benefits, as provided in RCW ((~~51.32.099(4) and~~)) 51.32.096.

((~~(4)~~)) (5) To encourage the employment of individuals who have suffered an injury or occupational disease resulting in permanent disability which may be a substantial obstacle to employment, the supervisor or supervisor's designee, in his or her sole discretion, may provide assistance including job placement services for eligible injured workers who are receiving vocational services under the return-to-work priorities listed in subsection ((~~(2)~~)) (3)(b) through (i) of this section, except for self-employment, and to employers that employ them. The assistance listed in (a) through (f) of this subsection is only available in cases where the worker is employed:

(a) Reduction or elimination of premiums or assessments owed by employers for such workers;

(b) Reduction or elimination of charges against the employers in the event of further injury to such workers in their employ;

(c) Reimbursement of the injured worker's wages for light duty or transitional work consistent with the limitations in RCW 51.32.090(4)(c);

(d) Reimbursement for the costs of clothing that is necessary to allow the worker to perform the offered work consistent with the limitations in RCW 51.32.090(4)(e);

(e) Reimbursement for the costs of tools or equipment to allow the worker to perform the work consistent with the limitations in RCW 51.32.090(4)(f);

(f) A one-time payment ((~~equal to the lesser of ten percent of the worker's wages including commissions and bonuses paid or ten thousand dollars~~)) of $25,000 for continuous employment without reduction in base wages for at least ((~~twelve~~)) 12 months. The ((~~twelve~~)) 12 months begin the first date of employment and the one-time payment is available at the sole discretion of the supervisor of industrial insurance;

(g) The benefits described in this section are available to a state fund employer without regard to whether the worker was employed by the state fund employer at the time of injury. The benefits are available to a self-insured employer only in cases where the worker was employed by a state fund employer at the time of injury or occupational disease manifestation;

(h) The benefits described in (a) through (f) of this subsection ((~~(4)~~)) (5) are only available in instances where a department-employed vocational rehabilitation professional ((~~and the injured worker's health care provider have confirmed~~)) has determined that the worker has returned to work that is reasonably consistent with the worker's ((~~limitations and physical~~)) restrictions.

((~~(5)~~)) (6)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed ((~~three thousand dollars~~)) $3,000 in any ((~~fifty-two~~)) 52 week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) Beginning with vocational rehabilitation plans approved on or after July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed ((~~four thousand dollars~~)) $4,000 in any ((~~fifty-two~~)) 52 week period, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than ((~~fifty-two~~)) 52 weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional ((~~fifty-two~~)) 52 weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging must also be paid.

(e) Costs paid under this subsection must be chargeable to the employer's cost experience or must be paid by the self-insurer as the case may be.

((~~(6)~~)) (7) In addition to the vocational rehabilitation expenditures provided for under subsection ((~~(5)~~)) (6) of this section ((~~and RCW 51.32.099~~)), an additional ((~~five thousand dollars~~)) $10,000 may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending provider must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 may not exceed ((~~five thousand dollars~~)) $10,000.

((~~(7)(a)~~)) (8) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections ((~~(5)~~)) (6) and ((~~(6)~~)) (7) of this section.

((~~(b) For vocational plans approved for a worker between January 1, 2008, through July 31, 2015, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section is limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services must conform to the requirements in RCW 51.32.099.~~

~~(8)~~)) (9) The department must establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations. The state fund must make referrals for vocational rehabilitation services based on these performance criteria.

((~~(9)~~)) (10) The department must engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section including participation by the department as a partner with WorkSource and with the private vocational rehabilitation community to refer workers to these vocational professionals for job search and job placement assistance. As a partner, the department must place vocational professional full-time employees at selected WorkSource locations who will work with employers to market the benefits of on-the-job training programs and preferred worker financial incentives as described in subsection ((~~(4)~~)) (5) of this section. For the purposes of this subsection, "WorkSource" means the established state system that administers the federal workforce investment act of 1998.

((~~(10)~~)) (11) The benefits in this section and RCW ((~~51.32.099 and~~)) 51.32.096 must be provided for the injured workers of self-insured employers. Self-insurers must report both benefits provided and benefits denied in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section or RCW ((~~51.32.099 or~~)) 51.32.096, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

((~~(11)~~)) (12) Except as otherwise provided, the benefits provided for in this section and RCW ((~~51.32.099 and~~)) 51.32.096 are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims may not be reopened solely for vocational rehabilitation purposes.

**Sec.**  RCW 51.32.096 and 2015 c 137 s 5 are each amended to read as follows:

(1) ((~~Through the collaboration of the vocational rehabilitation subcommittee established in RCW 51.32.099, certain vocational rehabilitation benefits and options have been identified as permanently needed to support appropriate outcomes for eligible injured workers.~~)) To continue the partnership of business and labor with regard to best practices in the provision of vocational services and to identify further improvements to Washington's vocational rehabilitation system and benefits, the director must appoint a vocational rehabilitation advisory committee to consist of at least one member representing employers insured by the state fund, one member representing self-insured employers, and two members representing workers. The appointments must be made from lists of nominations provided by statewide business, self-insured employers, and labor organizations.

(2) Prior to or during plan development, the department may authorize payment for workers who choose to pursue basic skills development training, such as English as a second language and general equivalency degree courses.

(3)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she must be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim must, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095((~~(2)~~)) (3) and of his or her rights and responsibilities under the workers' compensation vocational system. The department must provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department must also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first ((~~fifteen~~)) 15 days following the commencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ((~~ten~~)) 10 additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within ((~~fifteen~~)) 15 days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation must be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer must result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

((~~(3)~~)) (4)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations must result in suspension of vocational benefits pursuant to RCW 51.32.110, including the opportunity for the worker to demonstrate good cause.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department must develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ((~~ninety~~)) 90 days of the day the worker commences vocational plan development. The department may extend the ((~~ninety~~)) 90 days for good cause. Criteria for good cause must be provided in rule.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed ((~~seventeen thousand five hundred dollars~~)) $17,500. This amount must be adjusted effective July 1st of each year for vocational plans or retraining benefits available under subsection ((~~(4)~~)) (5)(b) of this section approved on or after this date but before June 30th of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges. Effective July 1, 2016, and each July 1st thereafter, the increase cannot exceed two percent per year, unless the amount available would be less than ((~~one hundred fifty~~)) 150 percent of the average cost of a two-year community college training plan. Effective July 1st following the calendar year in which the amount available is less than ((~~one hundred fifty~~)) 150 percent of the average cost of a two-year community college plan, costs for newly approved plans can be up to ((~~one hundred fifty~~)) 150 percent of this community college plan average. The average cost of two-year community college training plans will be calculated by the department based on plans completed during the preceding calendar year.

(e) The duration of the vocational plan may not exceed two years from the date the plan is implemented. The worker must receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging must also be paid.

((~~(4)~~)) (5) Except as provided in RCW 51.32.095((~~(3)~~)) (4), during vocational plan development the worker must, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan must be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker must elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within ((~~fifteen~~)) 15 days, the plan is deemed approved. Beginning the date the department approves the plan, or the date of a determination that the plan is valid following a dispute, through completion of the first academic quarter or three months' training, the worker may elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within ((~~twenty-five~~)) 25 days of the end of the first academic quarter or three months' training if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within ((~~fifteen~~)) 15 days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than ((~~twenty-five~~)) 25 days after the end of the first academic quarter or three months' training.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) must include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection ((~~(3)~~)) (4)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to nine months of temporary total disability compensation under RCW 51.32.090. The award must be reduced by the amount of any temporary total disability compensation paid for days starting with the first day of the academic quarter or three months' training and for any days through the date the department received the worker's written election of option 2. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments may not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection ((~~(3)~~)) (4)(d) of this section must remain available to the worker less any amount expended for the worker's participation in the first academic quarter or three months' training, upon application to the department or self-insurer, for a period of five years. The vocational costs must, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. Up to ((~~ten~~)) 10 percent of the total funds available to the worker can be used for vocational counseling and job placement services. The department must issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department must thereafter close the claim. A worker who elects option 2 benefits is not entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection must be rescinded and the amount paid to the worker must be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If, within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection ((~~(3)~~)) (4)(e) of this section may not exceed ((~~fifteen~~)) 15 months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) must include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection ((~~(3)~~)) (4)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection ((~~(3)~~)) (4) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

((~~(5)~~)) (6)(a) "Vocational plan interruption" for the purposes of this section means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection ((~~(3)~~)) (4)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer must recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits must be suspended in accordance with RCW 51.32.110, including the opportunity for the worker to demonstrate good cause. If plan development or implementation is recommenced, the cost and duration of the plan may not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement in subsection ((~~(3)~~)) (4)(a) of this section.

((~~(6)~~)) (7) Costs paid for vocational services and plans must be chargeable to the employer's cost experience or must be paid by the self-insurer, as the case may be. For state fund vocational plans implemented on or after January 1, 2008, the costs may be paid from the medical aid fund at the sole discretion of the director under the following circumstances:

(a) The worker previously participated in a vocational plan or selected a worker option as described in ((~~RCW 51.32.099(4) or in~~)) subsection ((~~(4)~~)) (5) of this section;

(b) The worker's prior vocational plan or selected option was based on an approved plan or option on or after January 1, 2008;

(c) For state fund employers, the date of injury or disease manifestation of the subsequent claim is within the period of time used to calculate their experience factor;

(d) The subsequent claim is for an injury or occupational disease that resulted from employment and work-related activities beyond the worker's documented restrictions.

((~~(7)~~)) (8) The vocational plan costs payable from the medical aid fund must include the costs of temporary total disability benefits, except those payable from the supplemental pension fund, from the date the vocational plan is implemented to the date the worker completes the plan or ceases participation. The vocational costs paid from the medical aid fund may not be charged to the state fund employer's cost experience.

**Sec.**  RCW 51.32.250 and 1988 c 161 s 10 are each amended to read as follows:

Modification of the injured worker's previous job or modification of a new job is recognized as a desirable method of returning the injured worker to gainful employment. In order to assist employers in meeting the costs of job modification, and to encourage employers to modify jobs to accommodate retaining or hiring workers with disabilities resulting from work-related injury, the supervisor or the supervisor's designee, in his or her discretion, may pay job modification costs in an amount not to exceed ((~~five thousand dollars~~)) $10,000 per worker per job modification. This payment is intended to be a cooperative participation with the employer and funds shall be taken from the appropriate account within the second injury fund.

The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury.

NEW SECTION. **Sec.**  This act takes effect January 1, 2025.

**--- END ---**