
Labor & Workplace Standards Committee

ESSB 5368

Brief Description: Expanding access to the workers' compensation stay-at-work program through off-site light duty return to work opportunities.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, King, Conway, Schoesler, Randall, Torres and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Establishes additional requirements for requesting, reviewing, and accepting light duty and transitional job offers made to injured workers in the workers' compensation system.
- Allows an employer with 100 or fewer employees to offer an injured worker a light duty or transitional job with an off-site nonprofit organization or charity.

Hearing Date: 2/14/24

Staff: Kelly Leonard (786-7147).

Background:

Workers who are injured or disabled in the course of employment are entitled to certain benefits through the workers' compensation program, administered by the Department of Labor and Industries (L&I). Benefits may include medical costs, temporary time-loss compensation, vocational rehabilitation benefits, and permanent disabilities benefits.

Light Duty Work.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

A worker has a temporary total disability when an injury or occupational disease temporarily and totally disables his or her ability to return to work. However, in the instance of a temporary total disability, the employer may facilitate the injured worker's return to work by providing light duty or transitional work approved by a health care provider. The employer of injury may request a worker be certified for light duty or transitional work. When submitting such a request, the employer must send the health care provider, with a copy to the worker, a statement describing the work available in terms that will enable the health care provider to relate the physical activities of the job to the worker's disability. The health care provider must then determine whether the worker is physically able to perform light duty or transitional work.

If the health care provider approves the injured worker's return to light duty or transitional work, the employer may assign only the work approved by the provider. The worker's time-loss benefits must continue until the worker begins work with the employer of injury. If a worker declines the approved light duty or transitional work, the worker may not access time-loss compensation or loss of earning power benefits.

If light duty or transitional work would impede the worker's recovery, the provider cannot approve it, and in cases where it was previously approved, the worker may not continue with the work.

Stay at Work Program.

Through the Stay at Work Program, the state provides wage subsidies and other incentives to employers insured through L&I who provide light duty and transitional work to injured workers. If an employer facilitates a return to light duty or transitional work, the employer is eligible to be reimbursed for the cost of:

- 50 percent of the basic, gross wages paid for light duty or transitional work, for a maximum of 66 work days within a consecutive 24 month period, up to \$10,000;
- tuition, books, fees, and materials required for any training or instruction necessary for the injured worker to be qualified for light duty or transitional work, up to \$1,000;
- clothing necessary for the performance of light duty or transitional work, up to \$400; and
- tools or equipment necessary to perform light duty or transitional work, up to \$2,500.

Summary of Bill:

Light Duty Work.

Changes are made to the process for requesting, evaluating, and accepting light duty or transitional work. When submitting a request for light duty work to a health care provider, the employer must send a contemporaneous copy of the request to the worker in his or her preferred language. The request must include a written job description. If more than 21 calendar days have passed since the health care provider's last appointment with the worker, the provider may meet with the worker, if the provider deems necessary, to determine whether the worker is able to perform the work. The provider's determination must be shared with both the worker and employer.

The worker must accept or decline a light duty job offer within seven days after receiving notification that the provider has approved the job description. Failure to timely accept a valid light duty job offer must result in termination of time-loss compensation, except in circumstances involving an off-site light duty job offer with a nonprofit organization or charity.

Off-Site Light Duty Work with Nonprofit Organizations.

An employer with 100 or fewer employees may offer off-site light duty work with a nonprofit organization or charity to an injured worker with a temporary total disability. Any offer of off-site light duty work is subject to the same requirements for on-site light duty work, including review and approval by a health care provider. However, the injured worker may reject the offer or otherwise terminate the off-site work, in which case the injured worker's temporary total disability payments must continue or be resumed. A written notice of the right to reject an offer of off-site light duty work must be provided to the injured worker in his or her preferred language. If the off-site light duty work is approved, the employer of injury remains accountable for all reporting requirements, and the employer of injury is responsible for any new injury or occupational disease incurred while the worker is on off-site light duty work. The employer of injury is eligible for reimbursements through the Stay at Work Program.

In order to offer off-site light duty work, the employer of injury must contract directly with the nonprofit organization or charity or with a return-to-work agency approved by L&I.

Research.

L&I must work with the Vocational Rehabilitation Advisory Committee (Committee) to research and report on meaningful return-to-work outcomes and the benefits of these policies on workers' mental health. The Committee must also study the quality of the work and benefits to the worker of transitional work with nonprofit organizations and make recommendations for improving outcomes. The report must be submitted to the Workers' Compensation Advisory Committee by October 31, 2029, for consideration of additional legislation.

Appropriation: None.

Fiscal Note: Requested on February 7, 2024.

Effective Date: The bill takes effect on January 1, 2026.