

SENATE BILL REPORT

SHB 2127

As Reported by Senate Committee On:
Labor & Commerce, February 19, 2024

Title: An act relating to increasing incentives to return to work in workers' compensation.

Brief Description: Concerning workers' compensation incentives to return to work.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Schmidt, Berry, Leavitt, Reed, Ormsby, Graham and Pollet; by request of Department of Labor & Industries).

Brief History: Passed House: 2/6/24, 97-0.

Committee Activity: Labor & Commerce: 2/15/24, 2/19/24 [DP].

Brief Summary of Bill

- Modifies certain return to work policies and reimbursement amounts under the workers' compensation program.
- Increases the maximum amounts of reimbursements paid to employers participating in the Stay at Work Program and Preferred Worker Program by the Department of Labor and Industries (L&I).
- Increases the maximum amount paid to qualifying employers for job modification costs by L&I.
- Allows L&I to authorize payments for basic skills development for qualifying injured workers.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, Hansen, MacEwen, Schoesler and Stanford.

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.

Staff: Susan Jones (786-7404)

Background: Industrial Insurance—Workers' Compensation. 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, vocational rehabilitation benefits, and permanent disabilities benefits.

Returning to Light Duty Work With a Temporary Disability. A worker has a temporary total disability when an injury or occupational disease temporarily and totally disables the worker's ability to return to work. However, in the instance of a temporary disability, the employer may facilitate the injured worker's return to work by providing light duty or transitional work approved by an attending provider.

Through the Stay at Work Program, the wage subsidies and other incentives are provided 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 certain costs associated with the light duty and transitional work, including:

- 50 percent of the basic, gross wages, for a maximum of 66 work days within a consecutive 24-month period, up to \$10,000;
- tuition, books, fees, and materials, up to \$1,000;
- clothing, up to \$400; and
- tools or equipment, up to \$2,500.

Reimbursements for the Stay at Work Program are paid from the Stay at Work Account, which is funded by assessments on employers. Employers are permitted to collect up to one-half of the assessment from workers.

Returning to Work With a Permanent Disability. In cases where a worker is permanently unable to return to the same job, L&I has various programs and provides employers with various incentives to facilitate the worker's return to the workplace.

In certain instances, L&I may pay, or direct self-insurers to pay, the costs of vocational rehabilitation services when these services are necessary and likely to enable the injured worker to become employable at gainful employment. L&I may assign a vocational counselor to help an injured worker and employer explore return to work opportunities. An injured worker who is unable to work within their restrictions may be eligible for retraining assistance to learn new skills. L&I may approve a vocational retraining plan developed by a counselor. The plan may include schooling or on-the-job training for up to two years. Vocational retraining plans must include several elements identified in statute.

If L&I approves vocational benefits or a retraining plan, it may pay certain costs for books, tuition, supplies, transportation, and related child care costs, in addition to time-loss

benefits, while the worker is actively participating in an approved vocational program. L&I may also pay up to \$5,000, for any accommodations that are medically necessary for the worker to participate in the program.

In determining whether to provide vocational and other services, L&I must prioritize certain options, including facilitating the injured worker's return to work with the same employer in the same position or a modified position. In order to assist an employer with the costs of job modification, L&I may pay an employer's job modification costs, up to \$5,000 per worker.

Preferred Worker Program. The Preferred Worker Program (PWP) provides financial incentives to employers who hire workers who have been injured in previous employment and are permanently restricted from certain duties due to their injuries. The PWP is only available if a vocational rehabilitation professional and the injured worker's health care provider have confirmed that the worker has returned to work that is reasonably consistent with the worker's restrictions.

To qualify for the PWP, the worker must first be certified by L&I as a preferred worker. An employer hiring a preferred worker is eligible for discounts on its Accident Fund and Medical Aid premiums for as long as the worker is certified as a preferred worker, up to 36 months. If the worker is injured on the job during the worker's certification period, the employer is not liable for the costs of the new claim, and it will not affect the employer's experience rating. The employer is eligible for reimbursement for a portion of the preferred worker's base wages, tools and equipment, and clothing, at the same rate permitted under the Stay at Work Program. The employer is also eligible to receive a one-time payment of 10 percent of the worker's wages, up to \$10,000, if the worker is continuously employed without a reduction in wages for at least 12 months.

Summary of Bill: Returning to Light Duty Work With a Temporary Disability. The reimbursement amounts that can be paid to employers in the Stay at Work Program are increased, as follows:

- 50 percent of the basic, gross wages, for a maximum of 120 work days within a consecutive 24-month period, up to \$25,000;
- tuition, books, fees, and materials, up to \$2,000;
- clothing, up to \$1,000; and
- tools or equipment, up to \$5,000.

The Stay at Work Account is modified. Payments for L&I-approved training providers may be made from the account for the purposes of providing optional basic skills development under the bill.

Returning to Work With a Permanent Disability. Prior to or during the development of a vocational retraining plan, L&I may authorize payments for basic skills development for qualifying workers. Participation in basic skills development is optional. Basic skills

development could include: (1) English language training; (2) basic computer literacy; (3) general education development or high school equivalency training; (4) technology or software needed to effectively participate in basic skills development; (5) tutoring for approved basic skills training; and (6) other skills that prepare an injured worker for gainful employment. Eligibility of training for this funding is based upon a recommendation from the assigned vocational rehabilitation counselor, and is discretionary on the part of L&I.

Funds for basic skills development are available once per claim equal to 25 percent of the maximum funding available for a vocational retraining plan, though the use of the funds does not reduce any funds available for a subsequent vocational retraining plan. Funds are paid directly to training providers or to vendors to procure necessary equipment or assistance, and may not be paid directly to the worker. Self-insured employers must pay for the costs of basic skills development for their injured workers.

Returning to Work With a Permanent Disability. The maximum amount that L&I may pay for certain accommodations necessary to support a worker's vocational program is increased to \$10,000. The maximum amount that L&I may pay to assist with an employer's job modification is increased to \$10,000.

Preferred Worker Program. The PWP is only available if a professional employed by L&I has determined that the worker has returned to work that is reasonably consistent with the worker's restrictions. The requirement that the work be approved by a health care provider is removed. The maximum reimbursements available for base wages, tools and equipment, and clothing, are increased to the same amounts permitted under the Stay at Work Program. The maximum one-time payment to incentivize continuous employment for 12 months is increased to \$25,000.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony: PRO: The Stay at Work Program is an incentive to have workers and employer return injured workers to work. The bill increases reimbursement amounts and provides new training programs. This is an important program to get workers back to work. This bill and the Senate bill work together.

Studies show that workers staying at work tend to recover faster and they can continue to earn wages. Workers coming back to work helps eliminate long-term disabilities. These jobs are meaningful.

The bill was amended to accommodate business concerns.

Persons Testifying: PRO: Representative Suzanne Schmidt, Prime Sponsor; Brenda Heilman, Department of Labor & Industries; Bruce K Beckett, Wa. Retail Association; Robert (Bob) Battles, Association of Washington Business (AWB).

Persons Signed In To Testify But Not Testifying: PRO: Lauren Gubbe, Associated General Contractors.