

SENATE BILL REPORT

SB 5368

As Reported by Senate Committee On:
Labor & Commerce, February 7, 2023

Title: An act relating to establishing equitable access to the workers' compensation stay-at-work program by allowing employers to offer off-site light duty return to work opportunities to injured workers.

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

Sponsors: Senators Keiser, King, Conway, Schoesler, Randall, Torres and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 2/02/23, 2/07/23 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Allows an employer with 100 or fewer employees to offer off-site light duty work to a worker with an established nonprofit organization under the Stay-at-Work Program and to seek reimbursement for certain wages paid the worker and expenditures subject to certain conditions.
- Allows the Department of Labor and Industries or the employee of injury to contract with an established return-to-work employment agency for the purpose of offering the work.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5368 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen and Robinson.

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.

Minority Report: Do not pass.

Signed by Senators Conway, Vice Chair; Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Stanford.

Staff: Susan Jones (786-7404)

Background: In 2011, the Legislature created the Stay-at-Work Program under the workers' compensation system. To encourage employers to maintain the employment of their injured workers, a state fund employer that offers work to a worker will be eligible for certain reimbursements, including a portion of the injured worker's wages paid for light duty or transitional work.

If a state fund employer offers a worker work under the Stay-at-Work Program, the employer is eligible for a reimbursement from the Department of Labor and Industries (L&I) of:

- 50 percent of the basic, gross wages paid for that work, for a maximum of 66 workdays within a consecutive 24 month period, with a maximum on a claim of \$10,000;
- up to \$1,000 for any tuition, books, fees, and materials required for training or instruction for the worker to be qualified to perform the offered work;
- up to \$400 for clothing necessary to allow the worker to perform the offered work;
- up to \$2,500 for tools or equipment provided to the worker to perform the offered work.

An employer may offer work to a worker more than once, but in no event may the employer receive wage subsidies for more than 66 days of work in a consecutive 24 month period under one claim. An employer may continue to offer work after the worker has performed 66 days of work, but the employer is not eligible to receive wage subsidies for such work.

The employer must submit to L&I the reimbursement request on forms. An employer may not receive wage subsidy payments or reimbursements of any expenses unless the worker's physician or licensed advanced registered nurse practitioner has restricted the worker from performing the worker's usual work, and the worker's physician or licensed advanced registered nurse practitioner has released the worker to perform the work offered.

Once the worker returns to work under the Stay-at-Work Program, the worker may 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 physician or licensed advanced registered nurse practitioner. An employer who directs a claimant to perform work other than that approved by the attending physician and without the approval of the worker's physician or licensed advanced registered nurse practitioner may not receive any wage subsidy or other reimbursements for such work.

If the worker returns to work under this program, any employee health and welfare benefits that the worker was receiving at the time of injury must continue or be resumed at the level provided at the time of injury. These benefits may not be continued or resumed if inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

An employer's experience rating will not be affected by the employer's request for or receipt of wage subsidies.

Summary of Bill (First Substitute): Under the Stay-at-Work Program, an employer with 100 or fewer employees may offer off-site light duty work to a worker with an established nonprofit organization approved by L&I, subject to the following:

- the employer of injury:
 1. may not disclose the worker's medical restrictions with the nonprofit without the worker's written consent;
 2. if the worker does not consent to disclosing their medical restrictions with the nonprofit organization, any approved light duty work must be with the employer of injury;
 3. remains accountable for all reporting requirements and responsible for any new injury or occupational disease incurred while the worker is on off-site light duty return to work; and
- the worker may reject an off-site light duty return-to-work offer;
- the offer of off-site light duty return to work is subject to the same parameters and conditions as an offer of available work with the employer of injury;
- the employer of injury may be eligible for reimbursement if L&I determines the employer qualifies;
- the injured worker does not forfeit any workers' compensation protections, including the worker's temporary total disability payments resuming if the worker terminates the off-site light duty work with the nonprofit; and
- the injured worker's experience gained through off-site light duty return to work with the nonprofit organization may not be construed as acquisition of transferable skills and does not disqualify the injured worker from accessing vocational rehabilitation services or other retraining programs available under this title.

L&I or the employer of injury may contract with an established return-to-work employment agency for the purpose of offering an injured worker off-site light duty return to work with a nonprofit organization.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Limits the offering return to work at nonprofits to employers with 100 or fewer employees at established nonprofit organizations.

- Provides that the injured worker does not forfeit any workers' compensation protections or benefits, and the worker may reject an off-site light duty return-to-work offer without limitation to religious or faith beliefs, or otherwise terminate the off-site light duty return to work with the nonprofit organization and the temporary total disability payments continue or must be resumed.
- Prohibits the injured worker's experience gained through the return to work with the nonprofit from being construed as acquisition of transferable skills and disqualifying the worker from accessing vocational rehabilitation services or other retraining programs.
- Allows the employer of injury to contract with an established return to work employment agency to offer the return to work at the nonprofit.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Many workers want to get out of the house while they are recovering from an injury. The stay-at-work program allows employees to get back to work sooner at a lightened capacity, boosts morale, and provides relief for the whole team. Workers in this program receive their normal wage, avoiding the 25-40% decrease in pay. After 6 months, there is only a 50% chance that an injured worker will return to work. Workers who are out too long often develop permanent disabilities. This retention rate can be improved by offering light duty return-to-work opportunities. Small employers often have a hard time finding valuable light duty options, but this bill would help those businesses by allowing them to send their employees to non-profit organizations. This is a path to reengagement and community for injured workers so that they do not suffer disconnect, depression, and permanent disability.

CON: This program needs more oversight. These light-duty options may require people to work with people and groups that they dislike or disagree with. Some options have included reading safety manuals for 8 hours, being COVID mask monitors, and men's room hand wash monitors. These jobs are useless, and the language about what counts as a quality duty should be improved. This may prevent workers from receiving job retraining. There is also monetary incentive for employers to move their workers to lighter pay positions.

OTHER: This stay-at-work bill is an incentive to employers to offer light duty opportunities, which benefits their worker retention and the employees' continued pay during times of injury. L&I is unable to make a value judgement on whether light-duty options are valuable.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Trent House, Washington State Dental Association; Rose Gundersen, WA Retail Association; Kerri Butler, Work Bridge Group; Debra Livingston, Reemployability; Bob Battles, Association of Washington Business (AWB); Sheri Call, Washington Trucking Associations; Tom Kwieciak, Building Industry Association of WA.

CON: Kathy Comfort, Washington State Association for Justice; Brian Wright, Washington State Association for Justice; Joe Kendo, Washington State Labor Council, AFL-CIO.

OTHER: Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.