

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2127

Chapter 90, Laws of 2024

68th Legislature
2024 Regular Session

WORKERS' COMPENSATION—RETURN TO WORK

EFFECTIVE DATE: January 1, 2025

Passed by the House February 6, 2024
Yeas 97 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate February 29,
2024
Yeas 46 Nays 0

DENNY HECK

President of the Senate

Approved March 14, 2024 11:23 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2127** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 14, 2024

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2127

Passed Legislature - 2024 Regular Session

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)

READ FIRST TIME 01/26/24.

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

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

5 **Sec. 1.** RCW 51.32.090 and 2023 c 171 s 7 are each amended to
6 read as follows:

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

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

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

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

4 (ii) For claims for injuries occurring on or after May 7, 1993,
5 equal (~~(eighty)~~) 80 percent of the actual difference between the
6 worker's present wages and earning power at the time of injury, but:

7 (A) The total of these payments and the worker's present wages may
8 not exceed (~~(one hundred fifty)~~) 150 percent of the average monthly
9 wage in the state as computed under RCW 51.08.018; (B) the payments
10 may not exceed (~~(one hundred)~~) 100 percent of the entitlement as
11 computed under subsection (1) of this section; and (C) the payments
12 may not be less than the worker would have received if (a)(i) of this
13 subsection had been applicable to the worker's claim.

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

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

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

25 (b) Whenever the employer of injury requests that a worker who is
26 entitled to temporary total disability under this chapter be
27 certified by the attending provider as able to perform available work
28 other than his or her usual work, the employer shall furnish to the
29 attending provider, with a copy to the worker, a statement describing
30 the work available with the employer of injury in terms that will
31 enable the attending provider to relate the activities of the job to
32 the worker's disability. The attending provider shall then determine
33 whether the worker is able to perform the work described. The
34 worker's temporary total disability payments shall continue until the
35 worker is released by his or her attending provider for the work, and
36 begins the work with the employer of injury. If the work thereafter
37 comes to an end before the worker's recovery is sufficient in the
38 judgment of his or her attending provider to permit him or her to
39 return to his or her usual job, or to perform other available work
40 offered by the employer of injury, the worker's temporary total

1 disability payments shall be resumed. Should the available work
2 described, once undertaken by the worker, impede his or her recovery
3 to the extent that in the judgment of his or her attending provider
4 he or she should not continue to work, the worker's temporary total
5 disability payments shall be resumed when the worker ceases such
6 work.

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

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

34 (e) If an employer insured with the department offers a worker
35 work pursuant to this subsection (4), and the employer provides the
36 worker with clothing that is necessary to allow the worker to perform
37 the offered work, the employer shall be eligible for reimbursement
38 for such clothing from the department, up to a maximum of (~~(four~~
39 ~~hundred dollars)~~) \$1,000. However, an employer shall not receive
40 reimbursement for any clothing it provided to the worker that it

1 normally provides to its workers. The clothing purchased for the
2 worker shall become the worker's property once the work comes to an
3 end.

4 (f) If an employer insured with the department offers a worker
5 work pursuant to this subsection (4) and the worker must be provided
6 with tools or equipment to perform the offered work, the employer
7 shall be eligible for a reimbursement from the department for such
8 tools and equipment and related costs as determined by department
9 rule, up to a maximum of (~~two thousand five hundred dollars~~)
10 \$5,000. An employer shall not be reimbursed for any tools or
11 equipment purchased prior to offering the work to the worker pursuant
12 to this subsection (4). An employer shall not be reimbursed for any
13 tools or equipment that it normally provides to its workers. The
14 tools and equipment shall be the property of the employer.

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

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

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

38 (j) Once the worker returns to work under the terms of this
39 subsection (4), he or she shall not be assigned by the employer to
40 work other than the available work described without the worker's

1 written consent, or without prior review and approval by the worker's
2 attending provider. An employer who directs a claimant to perform
3 work other than that approved by the attending provider and without
4 the approval of the worker's attending provider shall not receive any
5 wage subsidy or other reimbursements for such work.

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

13 (l) In the event of any dispute as to the validity of the work
14 offered or as to the worker's ability to perform the available work
15 offered by the employer, the department shall make the final
16 determination pursuant to an order that contains the notice required
17 by RCW 51.52.060 and that is subject to appeal subject to RCW
18 51.52.050.

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

21 (6) The department shall create a Washington stay-at-work account
22 which shall be funded by assessments of employers insured through the
23 state fund for the costs of the payments authorized by subsection (4)
24 of this section (~~and~~), for the cost of creating a reserve for
25 anticipated liabilities, and for costs authorized in RCW
26 51.32.095(2). Employers may collect up to one-half the fund
27 assessment from workers.

28 (7) No worker shall receive compensation for or during the day on
29 which injury was received or the three days following the same,
30 unless his or her disability shall continue for a period of
31 (~~fourteen~~) 14 consecutive calendar days from date of injury:
32 PROVIDED, That attempts to return to work in the first (~~fourteen~~)
33 14 days following the injury shall not serve to break the continuity
34 of the period of disability if the disability continues (~~fourteen~~)
35 14 days after the injury occurs.

36 (8) Should a worker suffer a temporary total disability and
37 should his or her employer at the time of the injury continue to pay
38 him or her the wages which he or she was earning at the time of such
39 injury, such injured worker shall not receive any payment provided in
40 subsection (1) of this section during the period his or her employer

1 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
2 sick leave, or other similar benefits shall not be deemed to be
3 payments by the employer for the purposes of this subsection.

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

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

	AFTER	PERCENTAGE
9		
10	June 30, 1993	105%
11	June 30, 1994	110%
12	June 30, 1995	115%
13	June 30, 1996	120%

14 (b) For dates of injury or disease manifestation after July 1,
15 2008, be less than (~~fifteen~~) 15 percent of the average monthly wage
16 in the state as computed under RCW 51.08.018 plus an additional (~~ten~~
17 ~~dollars~~) \$10 per month if the worker is married and an additional
18 (~~ten dollars~~) \$10 per month for each child of the worker up to a
19 maximum of five children. However, if the monthly payment computed
20 under this subsection (9)(b) is greater than (~~one hundred~~) 100
21 percent of the wages of the worker as determined under RCW 51.08.178,
22 the monthly payment due to the worker shall be equal to the greater
23 of the monthly wages of the worker or the minimum benefit set forth
24 in this section on June 30, 2008.

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

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

30 **Sec. 2.** RCW 51.32.095 and 2023 c 171 s 8 are each amended to
31 read as follows:

32 (1) One of the primary purposes of this title is to enable the
33 injured worker to become employable at gainful employment. To this
34 end, the department or self-insurers must utilize the services of
35 individuals and organizations, public or private, whose experience,
36 training, and interests in vocational rehabilitation and retraining
37 qualify them to lend expert assistance to the supervisor of

1 industrial insurance in such programs of vocational rehabilitation as
2 may be reasonable to make the worker employable consistent with his
3 or her physical and mental status. Where, after evaluation and
4 recommendation by such individuals or organizations and prior to
5 final evaluation of the worker's permanent disability and in the sole
6 opinion of the supervisor or supervisor's designee, whether or not
7 medical treatment has been concluded, vocational rehabilitation is
8 both necessary and likely to enable the injured worker to become
9 employable at gainful employment, the supervisor or supervisor's
10 designee may, in his or her sole discretion, pay or, if the employer
11 is a self-insurer, direct the self-insurer to pay the cost as
12 provided in subsection ~~((5))~~ (6) of this section ~~((or RCW~~
13 ~~51.32.099,))~~ as appropriate. An injured worker may not participate in
14 vocational rehabilitation under this section ~~((or RCW 51.32.099))~~ if
15 such participation would result in a payment of benefits as described
16 in RCW 51.32.240(5), and any benefits so paid must be recovered
17 according to the terms of that section.

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

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

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

26 (i) English language training;

27 (ii) Basic computer literacy;

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

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

32 (v) Tutoring for approved basic skills training;

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

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

37 (e) These funds are available once per claim equal to 25 percent
38 of the maximum funding available for vocational retraining defined in
39 RCW 51.32.096(4)(d). Use of these funds for basic skills development

1 does not reduce funds that are available for a formal retraining
2 plan.

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

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

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

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

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

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

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

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

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

- 1 (b) Modification of the previous job with the same employer
2 including transitional return to work;
- 3 (c) A new job with the same employer in keeping with any
4 limitations or restrictions;
- 5 (d) Modification of a new job with the same employer including
6 transitional return to work;
- 7 (e) Modification of the previous job with a new employer;
- 8 (f) A new job with a new employer or self-employment based upon
9 transferable skills;
- 10 (g) Modification of a new job with a new employer;
- 11 (h) A new job with a new employer or self-employment involving
12 on-the-job training;
- 13 (i) Short-term retraining.

14 ~~((3))~~ (4) Notwithstanding subsection ~~((2))~~ (3) of this
15 section, vocational services may be provided to an injured worker who
16 has suffered the loss or complete use of both legs, or arms, or one
17 leg and one arm, or total eyesight when, in the sole discretion of
18 the supervisor or the supervisor's designee, these services will
19 either substantially improve the worker's quality of life or
20 substantially improve the worker's ability to function in an
21 employment setting, regardless of whether or not these services are
22 either necessary or reasonably likely to make the worker employable
23 at any gainful employment. Vocational services must be completed
24 prior to the commencement of the worker's entitlement to benefits
25 under RCW 51.32.060. However, workers who are eligible for vocational
26 services under this subsection are not eligible for option 2
27 benefits, as provided in RCW ~~((51.32.099(4) and))~~ 51.32.096.

28 ~~((4))~~ (5) To encourage the employment of individuals who have
29 suffered an injury or occupational disease resulting in permanent
30 disability which may be a substantial obstacle to employment, the
31 supervisor or supervisor's designee, in his or her sole discretion,
32 may provide assistance including job placement services for eligible
33 injured workers who are receiving vocational services under the
34 return-to-work priorities listed in subsection ~~((2))~~ (3)(b) through
35 (i) of this section, except for self-employment, and to employers
36 that employ them. The assistance listed in (a) through (f) of this
37 subsection is only available in cases where the worker is employed:

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

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

3 (c) Reimbursement of the injured worker's wages for light duty or
4 transitional work consistent with the limitations in RCW
5 51.32.090(4)(c);

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

9 (e) Reimbursement for the costs of tools or equipment to allow
10 the worker to perform the work consistent with the limitations in RCW
11 51.32.090(4)(f);

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

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

25 (h) The benefits described in (a) through (f) of this subsection
26 (~~((4))~~) (5) are only available in instances where a department-
27 employed vocational rehabilitation professional (~~(and the injured~~
28 ~~worker's health care provider have confirmed))~~ has determined that
29 the worker has returned to work that is reasonably consistent with
30 the worker's (~~(limitations and physical))~~ restrictions.

31 (~~((5))~~) (6)(a) Except as provided in (b) of this subsection,
32 costs for vocational rehabilitation benefits allowed by the
33 supervisor or supervisor's designee under subsection (1) of this
34 section may include the cost of books, tuition, fees, supplies,
35 equipment, transportation, child or dependent care, and other
36 necessary expenses for any such worker in an amount not to exceed
37 (~~(three thousand dollars))~~ \$3,000 in any (~~(fifty-two))~~ 52 week
38 period, and the cost of continuing the temporary total disability
39 compensation under RCW 51.32.090 while the worker is actively and

1 successfully undergoing a formal program of vocational
2 rehabilitation.

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

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

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

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

29 (~~(6)~~) (7) In addition to the vocational rehabilitation
30 expenditures provided for under subsection (~~(5)~~) (6) of this
31 section (~~and RCW 51.32.099~~), an additional (~~five thousand~~
32 ~~dollars~~) \$10,000 may, upon authorization of the supervisor or the
33 supervisor's designee, be expended for: (a) Accommodations for an
34 injured worker that are medically necessary for the worker to
35 participate in an approved retraining plan; and (b) accommodations
36 necessary to perform the essential functions of an occupation in
37 which an injured worker is seeking employment, consistent with the
38 retraining plan or the recommendations of a vocational evaluation.
39 The injured worker's attending provider must verify the necessity of
40 the modifications or accommodations. The total expenditures

1 authorized in this subsection and the expenditures authorized under
2 RCW 51.32.250 may not exceed (~~(five thousand dollars)~~) \$10,000.

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

10 (~~(b)~~ For vocational plans approved for a worker between January
11 1, 2008, through July 31, 2015, total vocational costs allowed by the
12 supervisor or supervisor's designee under subsection (1) of this
13 section is limited to those provided under the pilot program
14 established in RCW 51.32.099, and vocational rehabilitation services
15 must conform to the requirements in RCW 51.32.099.

16 ~~(8)~~) (9) The department must establish criteria to monitor the
17 quality and effectiveness of rehabilitation services provided by the
18 individuals and organizations. The state fund must make referrals for
19 vocational rehabilitation services based on these performance
20 criteria.

21 (~~(9)~~) (10) The department must engage in, where feasible and
22 cost-effective, a cooperative program with the state employment
23 security department to provide job placement services under this
24 section including participation by the department as a partner with
25 WorkSource and with the private vocational rehabilitation community
26 to refer workers to these vocational professionals for job search and
27 job placement assistance. As a partner, the department must place
28 vocational professional full-time employees at selected WorkSource
29 locations who will work with employers to market the benefits of on-
30 the-job training programs and preferred worker financial incentives
31 as described in subsection (~~(4)~~) (5) of this section. For the
32 purposes of this subsection, "WorkSource" means the established state
33 system that administers the federal workforce investment act of 1998.

34 (~~(10)~~) (11) The benefits in this section and RCW (~~(51.32.099~~
35 ~~and)~~) 51.32.096 must be provided for the injured workers of self-
36 insured employers. Self-insurers must report both benefits provided
37 and benefits denied in the manner prescribed by the department by
38 rule adopted under chapter 34.05 RCW. The director may, in his or her
39 sole discretion and upon his or her own initiative or at any time
40 that a dispute arises under this section or RCW (~~(51.32.099 or)~~)

1 51.32.096, promptly make such inquiries as circumstances require and
2 take such other action as he or she considers will properly determine
3 the matter and protect the rights of the parties.

4 ~~((11))~~ (12) Except as otherwise provided, the benefits provided
5 for in this section and RCW ~~((51.32.099 and))~~ 51.32.096 are available
6 to any otherwise eligible worker regardless of the date of industrial
7 injury. However, claims may not be reopened solely for vocational
8 rehabilitation purposes.

9 **Sec. 3.** RCW 51.32.096 and 2015 c 137 s 5 are each amended to
10 read as follows:

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

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

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

34 (b) When the supervisor or supervisor's designee has decided that
35 vocational rehabilitation is both necessary and likely to make the
36 worker employable at gainful employment, he or she must be provided
37 with services necessary to develop a vocational plan that, if
38 completed, would render the worker employable. The vocational
39 professional assigned to the claim must, at the initial meeting with

1 the worker, fully inform the worker of the return-to-work priorities
2 set forth in RCW 51.32.095(~~((2))~~) (3) and of his or her rights and
3 responsibilities under the workers' compensation vocational system.
4 The department must provide tools to the vocational professional for
5 communicating this and other information required by RCW 51.32.095
6 and this section to the worker.

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

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

33 (~~((3))~~) (4)(a) All vocational plans must contain an
34 accountability agreement signed by the worker detailing expectations
35 regarding progress, attendance, and other factors influencing
36 successful participation in the plan. Failure to abide by the agreed
37 expectations must result in suspension of vocational benefits
38 pursuant to RCW 51.32.110, including the opportunity for the worker
39 to demonstrate good cause.

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

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

11 (d) Costs for the vocational plan may include books, tuition,
12 fees, supplies, equipment, child or dependent care, training fees for
13 on-the-job training, the cost of furnishing tools and other equipment
14 necessary for self-employment or reemployment, and other necessary
15 expenses in an amount not to exceed (~~(seventeen thousand five hundred~~
16 ~~dollars)~~) \$17,500. This amount must be adjusted effective July 1st of
17 each year for vocational plans or retraining benefits available under
18 subsection (~~((4))~~) (5)(b) of this section approved on or after this
19 date but before June 30th of the next year based on the average
20 percentage change in tuition for the next fall quarter for all
21 Washington state community colleges. Effective July 1, 2016, and each
22 July 1st thereafter, the increase cannot exceed two percent per year,
23 unless the amount available would be less than (~~(one hundred fifty)~~)
24 150 percent of the average cost of a two-year community college
25 training plan. Effective July 1st following the calendar year in
26 which the amount available is less than (~~(one hundred fifty)~~) 150
27 percent of the average cost of a two-year community college plan,
28 costs for newly approved plans can be up to (~~(one hundred fifty)~~) 150
29 percent of this community college plan average. The average cost of
30 two-year community college training plans will be calculated by the
31 department based on plans completed during the preceding calendar
32 year.

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

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

1 (~~(4)~~) (5) Except as provided in RCW 51.32.095(~~(3)~~) (4),
2 during vocational plan development the worker must, with the
3 assistance of a vocational professional, participate in vocational
4 counseling and occupational exploration to include, but not be
5 limited to, identifying possible job goals, training needs,
6 resources, and expenses, consistent with the worker's physical and
7 mental status. A vocational rehabilitation plan must be developed by
8 the worker and the vocational professional and submitted to the
9 department or self-insurer. Following this submission, the worker
10 must elect one of the following options:

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

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

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

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

38 (i) If, within five years from the date the option 2 order
39 becomes final, the worker is subsequently injured or suffers an
40 occupational disease or reopens the claim as provided in RCW

1 51.32.160, and vocational rehabilitation is found both necessary and
2 likely to enable the injured worker to become employable at gainful
3 employment under RCW 51.32.095(1), the duration of any vocational
4 plan under subsection (~~(3)~~) (4)(e) of this section may not exceed
5 (~~fifteen~~) 15 months.

6 (ii) If the available vocational costs are utilized by the
7 worker, any subsequent assessment of whether vocational
8 rehabilitation is both necessary and likely to enable the injured
9 worker to become employable at gainful employment under RCW
10 51.32.095(1) must include consideration of the transferable skills
11 obtained.

12 (iii) If the available vocational costs are utilized by the
13 worker and the claim is thereafter reopened as provided in RCW
14 51.32.160, the cost available for any vocational plan is limited to
15 that in subsection (~~(3)~~) (4)(d) of this section less that
16 previously expended.

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

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

23 (~~(5)~~) (6)(a) "Vocational plan interruption" for the purposes of
24 this section means an occurrence which disrupts the plan to the
25 extent the employability goal is no longer attainable. "Vocational
26 plan interruption" does not include institutionally scheduled breaks
27 in educational programs, occasional absence due to illness, or
28 modifications to the plan which will allow it to be completed within
29 the cost and time provisions of subsection (~~(3)~~) (4)(d) and (e) of
30 this section.

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

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

15 ~~((+6))~~ (7) Costs paid for vocational services and plans must be
16 chargeable to the employer's cost experience or must be paid by the
17 self-insurer, as the case may be. For state fund vocational plans
18 implemented on or after January 1, 2008, the costs may be paid from
19 the medical aid fund at the sole discretion of the director under the
20 following circumstances:

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

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

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

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

32 ~~((+7))~~ (8) The vocational plan costs payable from the medical
33 aid fund must include the costs of temporary total disability
34 benefits, except those payable from the supplemental pension fund,
35 from the date the vocational plan is implemented to the date the
36 worker completes the plan or ceases participation. The vocational
37 costs paid from the medical aid fund may not be charged to the state
38 fund employer's cost experience.

1 **Sec. 4.** RCW 51.32.250 and 1988 c 161 s 10 are each amended to
2 read as follows:

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

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

18 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2025.

Passed by the House February 6, 2024.
Passed by the Senate February 29, 2024.
Approved by the Governor March 14, 2024.
Filed in Office of Secretary of State March 14, 2024.

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