
HOUSE BILL 1137

State of Washington

68th Legislature

2023 Regular Session

By Representatives Mosbrucker and Berry

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1 AN ACT Relating to establishing equitable access to the workers
2 compensation stay-at-work program by allowing employers to offer off-
3 site light duty return to work opportunities to injured workers;
4 amending RCW 51.32.090; creating a new section; and providing an
5 effective date.

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

7 NEW SECTION. **Sec. 1.** (1) The state established the stay-at-work
8 program to reduce long-term disability and the cost of injuries by
9 incentivizing employers to provide injured workers light duty and
10 transitional return-to-work opportunities. Data from the department
11 of labor and industries illustrates that the program has been
12 successful for both workers and employers by lowering the risk of
13 long-term disability and improving mental health and well-being
14 through the return of more workers to positions that allow for the
15 time necessary for healing and rehabilitation.

16 (2) However, current policy only allows for light duty return to
17 work with the employer of injury, limiting opportunities and creating
18 inequities for workers and employers. Small employers are less likely
19 to have suitable light duty jobs. Frontline workers, particularly in
20 small businesses, are less likely to have access to remote light duty
21 work. Injured workers who move out of state are also less likely to

1 have access to return-to-work opportunities, especially when the
2 employer of injury cannot offer remote work options. Inequitable
3 access to return to work is more acute for lower wage workers, many
4 of whom are frontline workers. The COVID-19 pandemic has illuminated
5 the particularly limited and inequitable access to return to work
6 between frontline and remote workers.

7 (3) The legislature hereby intends to provide more opportunities
8 for workers to access return to work and for employers to take
9 advantage of the stay-at-work program by allowing flexibility in
10 matching injured workers to temporary positions with local nonprofits
11 to perform light duty work. This is a proven approach that has been
12 successful with return-to-work employment agencies nationally and
13 within the state. This approach preserves all protections for injured
14 workers, reduces claim costs, transitions workers back to productive
15 work more quickly while allowing for recuperation, and benefits local
16 nonprofits by providing experienced workers for important service
17 roles.

18 **Sec. 2.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
19 amended to read as follows:

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

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

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

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

36 (ii) For claims for injuries occurring on or after May 7, 1993,
37 equal eighty percent of the actual difference between the worker's
38 present wages and earning power at the time of injury, but: (A) The
39 total of these payments and the worker's present wages may not exceed

1 one hundred fifty percent of the average monthly wage in the state as
2 computed under RCW 51.08.018; (B) the payments may not exceed one
3 hundred percent of the entitlement as computed under subsection (1)
4 of this section; and (C) the payments may not be less than the worker
5 would have received if (a)(i) of this subsection had been applicable
6 to the worker's claim.

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

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

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

18 (b) Whenever the employer of injury requests that a worker who is
19 entitled to temporary total disability under this chapter be
20 certified by a physician or licensed advanced registered nurse
21 practitioner as able to perform available work other than his or her
22 usual work, the employer shall furnish to the physician or licensed
23 advanced registered nurse practitioner, with a copy to the worker, a
24 statement describing the work available with the employer of injury,
25 or with an approved nonprofit pursuant to (m) of this subsection, in
26 terms that will enable the physician or licensed advanced registered
27 nurse practitioner to relate the physical activities of the job to
28 the worker's disability. The physician or licensed advanced
29 registered nurse practitioner shall then determine whether the worker
30 is physically able to perform the work described. The worker's
31 temporary total disability payments shall continue until the worker
32 is released by his or her physician or licensed advanced registered
33 nurse practitioner for the work, and begins the work with the
34 employer of injury, or with an approved nonprofit pursuant to (m) of
35 this subsection. If the work thereafter comes to an end before the
36 worker's recovery is sufficient in the judgment of his or her
37 physician or licensed advanced registered nurse practitioner to
38 permit him or her to return to his or her usual job, or to perform
39 other available work offered by the employer of injury, the worker's
40 temporary total disability payments shall be resumed. Should the

1 available work described, once undertaken by the worker, impede his
2 or her recovery to the extent that in the judgment of his or her
3 physician or licensed advanced registered nurse practitioner he or
4 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 percent of the basic, gross
12 wages paid for that work, for a maximum of sixty-six workdays within
13 a consecutive twenty-four month period. In no event may the wage
14 subsidies paid to an employer on a claim exceed ten thousand dollars.
15 Wage subsidies shall be calculated using the worker's basic hourly
16 wages or basic salary, and no subsidy shall be paid for any other
17 form of compensation or payment to the worker such as tips,
18 commissions, bonuses, board, housing, fuel, health care, dental care,
19 vision care, per diem, reimbursements for work-related expenses, or
20 any other payments. An employer may not, under any circumstances,
21 receive a wage subsidy for a day in which the worker did not actually
22 perform any work, regardless of whether or not the employer paid the
23 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. Reimbursing an employer for the costs of such training or
31 instruction does not constitute a determination by the department
32 that the worker is eligible for vocational services authorized by RCW
33 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. However, an employer shall not receive reimbursement
40 for any clothing it provided to the worker that it normally provides

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

3 (f) If an employer insured with the department offers a worker
4 work pursuant to this subsection (4) and the worker must be provided
5 with tools or equipment to perform the offered work, the employer
6 shall be eligible for a reimbursement from the department for such
7 tools and equipment and related costs as determined by department
8 rule, up to a maximum of (~~two thousand five hundred dollars~~)
9 \$2,500. An employer shall not be reimbursed for any tools or
10 equipment purchased prior to offering the work to the worker pursuant
11 to this subsection (4). An employer shall not be reimbursed for any
12 tools or equipment that it normally provides to its workers. The
13 tools and equipment shall be the property of the employer.

14 (g) An employer may offer work to a worker pursuant to this
15 subsection (4) more than once, but in no event may the employer
16 receive wage subsidies for more than (~~sixty-six~~) 66 days of work in
17 a consecutive (~~twenty-four~~) 24 month period under one claim. An
18 employer may continue to offer work pursuant to this subsection (4)
19 after the worker has performed (~~sixty-six~~) 66 days of work, but the
20 employer shall not be eligible to receive wage subsidies for such
21 work.

22 (h) An employer shall not receive any wage subsidies or
23 reimbursement of any expenses pursuant to this subsection (4) unless
24 the employer has completed and submitted the reimbursement request on
25 forms developed by the department, along with all related information
26 required by department rules. No wage subsidy or reimbursement shall
27 be paid to an employer who fails to submit a form for such payment
28 within one year of the date the work was performed. In no event shall
29 an employer receive wage subsidy payments or reimbursements of any
30 expenses pursuant to this subsection (4) unless the worker's
31 physician or licensed advanced registered nurse practitioner has
32 restricted him or her from performing his or her usual work and the
33 worker's physician or licensed advanced registered nurse practitioner
34 has released him 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 physician or licensed advanced registered nurse practitioner. An
3 employer who directs a claimant to perform work other than that
4 approved by the attending physician and without the approval of the
5 worker's physician or licensed advanced registered nurse practitioner
6 shall not receive any wage subsidy or other reimbursements for such
7 work.

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

15 (l) In the event of any dispute as to the validity of the work
16 offered or as to the worker's ability to perform the available work
17 offered by the employer, the department shall make the final
18 determination pursuant to an order that contains the notice required
19 by RCW 51.52.060 and that is subject to appeal subject to RCW
20 51.52.050.

21 (m) An employer may offer off-site light duty return to work to a
22 worker pursuant to this subsection (4) with a nonprofit organization
23 approved by the department, subject to the following parameters and
24 conditions:

25 (i) The employer of injury remains accountable for all reporting
26 requirements;

27 (ii) The employer of injury remains responsible for any new
28 injury or occupational disease incurred while the worker is on off-
29 site light duty return to work;

30 (iii) The worker may reject an off-site light duty return-to-work
31 offer if the mission of the nonprofit conflicts with the worker's
32 fundamental religious or faith beliefs;

33 (iv) The offer of off-site light duty return to work under this
34 subsection (4) (m) is subject to the same parameters and conditions as
35 an offer of available work with the employer of injury;

36 (v) The employer of injury may be eligible for reimbursement
37 under (c) through (g) of this subsection (4) if the department
38 determines he or she qualifies; and

1 (vi) The injured worker accepting off-site light duty return to
2 work does not forfeit any protections afforded to him or her under
3 this title.

4 (n) In approving nonprofit organizations for off-site light duty
5 return to work under (m) of this subsection (4), the department may
6 contract with one or more established return-to-work employment
7 agencies.

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

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

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

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

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

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

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

1	June 30, 1995	115%
2	June 30, 1996	120%

3 (b) For dates of injury or disease manifestation after July 1,
4 2008, be less than (~~fifteen~~) 15 percent of the average monthly wage
5 in the state as computed under RCW 51.08.018 plus an additional (~~ten~~
6 ~~dollars~~) \$10 per month if the worker is married and an additional
7 (~~ten dollars~~) \$10 per month for each child of the worker up to a
8 maximum of five children. However, if the monthly payment computed
9 under this subsection (9)(b) is greater than (~~one hundred~~) 100
10 percent of the wages of the worker as determined under RCW 51.08.178,
11 the monthly payment due to the worker shall be equal to the greater
12 of the monthly wages of the worker or the minimum benefit set forth
13 in this section on June 30, 2008.

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

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

19 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2024.

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