

Title 51

INDUSTRIAL INSURANCE

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Chapter 51.04 RCW GENERAL PROVISIONS

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51.04.010 Declaration of police power—Jurisdiction of courts abolished. The common law system governing the remedy of workers against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided. [1977 ex.s. c 350 § 1; 1972 ex.s. c 43 § 1; 1961 c 23 § 51.04.010. Prior: 1911 c 74 § 1; RRS § 7673.]

51.04.020 Powers and duties. The director shall:

- (1) Establish and adopt rules governing the administration of this title;
- (2) Ascertain and establish the amounts to be paid into and out of the accident fund;
- (3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency;
- (4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;
- (5) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;
- (6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department;

(7) Compile statistics which will afford reliable information upon which to base operations of all divisions under the department;

(8) Make an annual report to the governor of the workings of the department;

(9) Be empowered to enter into agreements with the appropriate agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and injuries are received in the other state, and insofar as permitted by the Constitution and laws of the United States, to enter into similar agreements with the provinces of Canada; and

(10) Designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. [2000 c 5 § 14; 1994 c 164 § 24; 1977 c 75 § 77; 1963 c 29 § 1; 1961 c 23 § 51.04.020. Prior: 1957 c 70 § 3; prior: (i) 1921 c 182 § 9; 1911 c 74 § 24; RRS § 7703. (ii) 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Assignment of wage claims: RCW 49.48.040.

Electricians, installations: Chapters 19.28, 19.29 RCW.

Farm labor contractors: Chapter 19.30 RCW.

Health and safety, underground workers: Chapter 49.24 RCW.

Minimum wage act: Chapter 49.46 RCW.

Seasonal labor disputes: Chapter 49.40 RCW.

Washington Industrial Safety and Health Act: Chapter 49.17 RCW.

Additional notes found at www.leg.wa.gov

51.04.024 Establishment of investigation unit—Receipt and use of criminal history information. (1) There is established an investigation unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful under this title. The director will employ supervisory and investigative personnel for the program, who must be qualified by training and experience.

(2) The director and the investigation unit are authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation, abuse, fraud, or suitability for involvement of persons under Title 51 RCW. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. [2008 c 74 § 2.]

Finding—2008 c 74: "The legislature finds it necessary to provide the authority to allow specific units within the agencies affected by this act to access criminal history information for certified criminal justice purposes. For the agencies indicated in sections 2 through 7 of this act, the accessing of this information is for investigative purposes so that the agencies are able to efficiently address areas of potential fraud and abuse and to maintain the safety of investigative staff. For the agency responsible for administering and enforcing section 8 of this act, accessing this information is necessary for any purpose associated with employment by the commission or peace officer certification." [2008 c 74 § 1.]

51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment. (1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to workers injured during the course of

their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as state-wide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule and its associated billing or payment instructions and policies constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it. [2011 c 290 § 1; 2004 c 65 § 1; 1998 c 230 § 1; 1997 c 325 § 2; 1994 c 164 § 25. Prior: 1993 c 515 § 1; 1993 c 159 § 1; 1989 c 189 § 1; 1986 c 200 § 8; 1980 c 14 § 1; prior: 1977 ex.s. c 350 § 2; 1977 ex.s. c 239 § 1; 1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030; prior: (i) 1917 c 28 § 6; RRS § 7715.

(ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

Additional notes found at www.leg.wa.gov

51.04.040 Subpoena power of director—Enforcement by superior court—Application for court approval prior to issuance—No notice required. (1) The director and his or her authorized assistants have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department, any billing submitted to the department, or the assessment or collection of premiums. The superior court has the power to enforce any such subpoena by proper proceedings.

(2)(a) The director and his or her authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (i) state that an order is sought pursuant to this subsection; (ii) adequately specify the records, documents, or testimony; and (iii) declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(c) The director and his or her authorized assistants may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. [2010 c 22 § 2; 1987 c 316 § 1; 1986 c 200 § 9; 1977 ex.s. c 323 § 1; 1961 c 23 § 51.04.040. Prior: 1915 c 188 § 7; RRS § 7699.]

Findings—Intent—2010 c 22: "(1) The legislature finds that underground economy activity in this state results in lost revenue to the state and is unfair to law-abiding businesses. The legislature further finds that agencies that collect taxes and overpayments on behalf of the state have authority under current law to issue subpoenas and that the issuance of subpoenas is a highly useful tool in the investigation of underground activity of businesses and the unreported employees who work for them. The legislature further finds that in the case of *State v. Miles*, the Washington supreme court held that Article 1, section 7 of the state Constitution requires judicial review of a subpoena under some circumstances.

(2) The legislature therefore intends to provide a process for the department of revenue, the department of labor and industries, and the employment security department to apply for court approval of an agency investigative subpoena which is authorized under current law in cases where the agency seeks such approval, or where court approval is required by Article 1, section 7. The legislature does not intend to require court approval except where otherwise required by law or Article 1, section 7. The legislature does not intend to create any new authority to subpoena records or create any new rights for any person." [2010 c 22 § 1.]

Additional notes found at www.leg.wa.gov

51.04.050 Physician or licensed advanced registered nurse practitioner's testimony not privileged. In all hear-

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ings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to patient. [2004 c 65 § 2; 1961 c 23 § 51.04.050. Prior: 1915 c 188 § 4; RRS § 7687.]

Nurse-patient privilege subject to RCW 51.04.050: RCW 5.62.030.

Additional notes found at www.leg.wa.gov

51.04.060 No evasion of benefits or burdens. No employer or worker shall exempt himself or herself from the burden or waive the benefits of this title by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void. [1977 ex.s. c 350 § 3; 1961 c 23 § 51.04.060. Prior: 1911 c 74 § 11; RRS § 7685.]

51.04.062 Findings. The legislature finds that Washington state's workers' compensation system should be designed to focus on achieving the best outcomes for injured workers. Further, the legislature recognizes that controlling pension costs is key to a financially sound workers' compensation system for employers and workers. To these ends, the legislature recognizes that certain workers would benefit from an option that allows them to initiate claim resolution structured settlements in order to pursue work or retirement goals independent of the system, provided that sufficient protections for injured workers are included. [2011 1st sp.s. c 37 § 301.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.063 Injured worker options—Claim resolution structured settlement agreements. (1) Notwithstanding RCW 51.04.060 or any other provision of this title, beginning on January 1, 2012, an injured worker who is at least fifty-five years of age on or after January 1, 2012, fifty-three years of age on or after January 1, 2015, or fifty years of age on or after January 1, 2016, may choose from the following: (a) To continue to receive all benefits for which they are eligible under this title, (b) to participate in vocational training if eligible, or (c) to initiate and agree to a resolution of their claim with a structured settlement.

(2)(a) As provided in this section, the parties to an allowed claim may initiate and agree to resolve a claim with a structured settlement for all benefits other than medical. Parties as defined in (b) of this subsection may only initiate claim resolution structured settlements if at least one hundred eighty days have passed since the claim was received by the department or self-insurer and the order allowing the claim is final and binding. All requirements of this title regarding entitlement to and payment of benefits will apply during this period. All claim resolution structured settlement agreements must be approved by the board of industrial insurance appeals.

(b) For purposes of this section, "parties" means:

(i) For a state fund claim, the worker, the employer, and the department. The employer will not be a party if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums, if they cannot be located, are no longer in business, or they fail to respond or decline to participate after timely notice of the claim resolution settlement process provided by the board and the department.

(ii) For a self-insured claim, the worker and the employer.

(c) The claim resolution structured settlement agreements shall:

(i) Bind the parties with regard to all aspects of a claim except medical benefits unless revoked by one of the parties as provided in subsection (6) of this section;

(ii) Provide a periodic payment schedule to the worker equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(iii) Not set aside or reverse an allowance order;

(iv) Not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and

(v) Not subject any funds covered under this title to any responsibility or burden without prior approval from the director or designee.

(d) For state fund claims, the department shall negotiate the claim resolution structured settlement agreement with the worker or their representative and with the employer or employers and their representative or representatives.

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or his or her representative. Workers of self-insured employers who are unrepresented may request that the office of the ombuds for self-insured injured workers provide assistance or be present during negotiations.

(f) Terms of the agreement may include the parties' agreement that the claim shall remain open for future necessary medical or surgical treatment related to the injury where there is a reasonable expectation such treatment is necessary. The parties may also agree that specific future treatment shall be provided without the application required in RCW 51.32.160.

(g) Any claim resolution structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(h) If a worker is not represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties must forward a copy of the signed agreement to the board with a request for a conference with an industrial appeals judge. The industrial appeals judge must schedule a conference with all parties within fourteen days for the purpose of (i) reviewing the terms of the proposed settlement agreement by the parties; and (ii) ensuring the worker has an understanding of the benefits generally available under this title and that a claim resolution structured settle-

ment agreement may alter the benefits payable on the claim or claims. The judge may schedule the initial conference for a later date with the consent of the parties.

(i) Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker.

(j) The industrial appeals judge may approve a claim resolution structured settlement agreement only if the judge finds that the agreement is in the best interest of the worker. When determining whether the agreement is in the best interest of the worker, the industrial appeals judge shall consider the following factors, taken as a whole, with no individual factor being determinative:

(i) The nature and extent of the injuries and disabilities of the worker;

(ii) The age and life expectancy of the injured worker;

(iii) Other benefits the injured worker is receiving or is entitled to receive and the effect a claim resolution structured settlement agreement might have on those benefits; and

(iv) The marital or domestic partnership status of the injured worker.

(k) Within seven days after the conference, the industrial appeals judge shall issue an order allowing or rejecting the claim resolution structured settlement agreement. There is no appeal from the industrial appeals judge's decision.

(l) If the industrial appeals judge issues an order allowing the claim resolution structured settlement agreement, the order must be submitted to the board.

(3) Upon receiving the agreement, the board shall approve it within thirty working days of receipt unless it finds that:

(a) The parties have not entered into the agreement knowingly and willingly;

(b) The agreement does not meet the requirements of a claim resolution structured settlement agreement;

(c) The agreement is the result of a material misrepresentation of law or fact;

(d) The agreement is the result of harassment or coercion; or

(e) The agreement is unreasonable as a matter of law.

(4) If a worker is represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties shall submit the agreement directly to the board without the conference described in this section.

(5) If the board approves the agreement, it shall provide notice to all parties. The department shall place the agreement in the applicable claim file or files.

(6) A party may revoke consent to the claim resolution structured settlement agreement by providing written notice to the other parties and the board within thirty days after the date the agreement is approved by the board.

(7) To the extent the worker is entitled to any benefits while a claim resolution structured settlement agreement is being negotiated or during the revocation period of an agreement, the benefits must be paid pursuant to the requirements of this title until the agreement becomes final.

(8) A claim resolution structured settlement agreement that meets the conditions in this section and that has become final and binding as provided in this section is binding on all parties to the agreement as to its terms and the injuries and

occupational diseases to which the agreement applies. A claim resolution structured settlement agreement that has become final and binding is not subject to appeal.

(9) All payments made to a worker pursuant to a final claim resolution structured settlement agreement must be reported to the department as claims costs pursuant to this title. If a self-insured employer contracts with a third-party administrator for claim services and the payment of benefits under this title, the third-party administrator shall also disburse the structured settlement payments pursuant to the agreement.

(10) Claims closed pursuant to a claim resolution structured settlement agreement can be reopened pursuant to RCW 51.32.160 for medical treatment only. Further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable under the same claim or claims for which a claim resolution structured settlement agreement has been approved by the board and has become final.

(11) Parties aggrieved by the failure of any other party to comply with the terms of a claim resolution structured settlement agreement have one year from the date of failure to comply to petition to the board. If the board determines that a party has failed to comply with an agreement, it will order compliance and will impose a penalty payable to the aggrieved party of up to twenty-five percent of the monetary amount unpaid at the time the petition for noncompliance was filed. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution structured settlement agreements.

(12) Parties and their representatives may not use settlement offers or the claim resolution structured settlement agreement process to harass or coerce any party. If the department determines that an employer has engaged in a pattern of harassment or coercion, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030.

(13) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals, other than final orders from the board of industrial insurance appeals, is private and exempt from disclosure under chapter 42.56 RCW.

(14) Information gathered during the claims resolution structured settlement agreement process, including but not limited to forms filled out by the parties and testimony during a claims resolution structured settlement conference before the board of industrial insurance appeals, is a statement made in the course of compromise negotiations and is inadmissible in any future litigation. [2014 c 142 § 2; 2013 c 23 § 104; 2011 1st sp.s. c 37 § 302.]

Rules—2011 1st sp.s. c 37 §§ 302 and 303: "The department of labor and industries and the board of industrial insurance appeals shall adopt rules as necessary to implement sections 302 and 303 of this act." [2011 1st sp.s. c 37 § 305.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.065 Claim resolution structured settlement agreements—Availability of copies. The department must maintain copies of all claim resolution structured settlement agreements entered into between the parties and furnish cop-

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ies of such agreements to any party actively negotiating a subsequent claim resolution structured settlement agreement with the worker on any allowed claim when requested. An employer may not consider a prior agreement when making a decision about hiring or the terms or conditions of employment. [2011 1st sp.s. c 37 § 303.]

Rules—2011 1st sp.s. c 37 §§ 302 and 303: See note following RCW 51.04.063.

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.069 Claim resolution structured settlement agreements—Reports and studies. On December 1, 2011, and annually thereafter through December 1, 2014, the department shall report annually to the appropriate committees of the legislature on the implementation of claim resolution structured settlement agreements. In calendar years 2015, 2019, and 2023, the department shall contract for an independent study of claim resolution structured settlement agreements approved by the board under this section. The study must be performed by a researcher with experience in workers' compensation issues. When selecting the independent researcher, the department shall consult with the workers' compensation advisory committee. The study must evaluate the quality and effectiveness of structured settlement agreements of state fund and self-insured claims, provide information on the impact of these agreements to the state fund and to self-insured employers, and evaluate the outcomes of workers who have resolved their claims through the claim resolution structured settlement agreement process. The study must be submitted to the appropriate committees of the legislature. [2011 1st sp.s. c 37 § 306.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.070 Minor worker is sui juris—Guardianship expense. A minor shall be deemed sui juris for the purpose of this title, and no other person shall have any cause of action or right to compensation for an injury to such minor worker, except as expressly provided in this title, but in the event of any disability payments becoming due under this title to a minor worker, under the age of eighteen, such disability payments shall be paid to his or her parent, guardian or other person having legal custody of his or her person until he or she reaches the age of eighteen. Upon the submission of written authorization by any such parent, guardian, or other person, any such disability payments may be paid directly to such injured worker under the age of eighteen years. If it is necessary to appoint a legal guardian to receive such disability payments, there shall be paid from the accident fund or by the self-insurer, as the case may be, toward the expenses of such guardianship a sum not to exceed three hundred dollars. [1980 c 14 § 2. Prior: 1977 ex.s. c 350 § 4; 1977 ex.s. c 323 § 2; 1961 c 23 § 51.04.070; prior: 1959 c 308 § 1; 1957 c 70 § 4; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

Additional notes found at www.leg.wa.gov

51.04.080 Sending notices, orders, payments to claimants. On all claims under this title, claimants' written notices, orders, or payments must be forwarded directly to

the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. Claimants' written notices, orders, or payments may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded. [2013 c 125 § 4; 2007 c 78 § 1; 1972 ex.s. c 43 § 2; 1961 c 23 § 51.04.080. Prior: 1959 c 308 § 2; 1957 c 70 § 5; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.04.082 Notices and orders—Mail, personal service, or electronic means. Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. If requested by the employer, any notice or order may be sent by secure electronic means except orders communicating the closure of a claim. Correspondence and notices sent electronically are considered received on the date sent by the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon. [2011 c 290 § 2; 1986 c 9 § 2.]

51.04.085 Transmission of amounts payable. The department may, at any time, on receipt of written authorization, transmit amounts payable to a claimant, beneficiary, or any supplier of goods or services to the account of such person in a bank or other financial institution regulated by state or federal authority. [1977 ex.s. c 323 § 26.]

Additional notes found at www.leg.wa.gov

51.04.090 Effect of adjudication of applicability. If any employer shall be adjudicated to be outside the lawful scope of this title, the title shall not apply to him or her or his or her worker, or if any worker shall be adjudicated to be outside the lawful scope of this title because of remoteness of his or her work from the hazard of his or her employer's work, any such adjudication shall not impair the validity of this title in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions for the creation of the accident fund, or the provisions of this title making the compensation to the worker provided in it exclusive of any other remedy on the part of the worker shall be held invalid the entire title shall be thereby invalidated. In other respects an adjudication of invalidity of any part of this title shall not affect the validity of the title as a whole or any other part thereof. [1977 ex.s. c 350 § 5; 1961 c 23 § 51.04.090. Prior: 1911 c 74 § 27; RRS § 7706.]

51.04.100 Statutes of limitation saved. If the provisions of this title relative to compensation for injuries to or death of workers become invalid because of any adjudication,

or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: PROVIDED, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the worker on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by this title, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed. [1977 ex.s. c 350 § 6; 1961 c 23 § 51.04.100. Prior: 1911 c 74 § 28; RRS § 7707.]

51.04.105 Continuation of medical aid contracts. The obligations of all medical aid contracts approved by the supervisor prior to the repeal of any section of this title pertaining to medical aid contracts shall continue until the expiration of such contracts notwithstanding any such repeal and all provisions of this title pertaining to the operation of medical aid contracts and the control and supervision of such contracts which were in effect at the time of such approval shall, notwithstanding any other provision of law, remain in full force and effect. [1977 ex.s. c 323 § 25.]

Additional notes found at www.leg.wa.gov

51.04.110 Workers' compensation advisory committee. The director shall appoint a workers' compensation advisory committee composed of ten members: Three representing subject workers, three representing subject employers, one representing self-insurers, one representing workers of self-insurers, and two ex officio members, without a vote, one of whom shall be the chair of the board of industrial appeals and the other the representative of the department. The member representing the department shall be chair. This committee shall conduct a continuing study of any aspects of workers' compensation as the committee shall determine require their consideration and shall assist in the identification of priorities for safety and health investment projects as provided in chapter 49.17 RCW. The committee shall report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1971 and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All

expenses of this committee shall be paid by the department. [2011 1st sp.s. c 37 § 502; 2010 c 8 § 14001; 1982 c 109 § 2; 1980 c 14 § 3. Prior: 1977 ex.s. c 350 § 7; 1977 c 75 § 78; 1975-'76 2nd ex.s. c 34 § 150; 1975 ex.s. c 224 § 1; 1972 ex.s. c 43 § 37; 1971 ex.s. c 289 § 67.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Managed care pilot projects: RCW 43.72.860.

Additional notes found at www.leg.wa.gov

51.04.120 Certificate of coverage required—Contents. Any employer other than a self-insurer subject to this title shall, under such rules as the department shall prescribe, apply for and obtain from the department a certificate of coverage. The certificate shall be personal and nontransferable and shall be valid as long as the employer continues in business and pays the taxes due the state. In case the employer maintains more than one place of business, a separate certificate of coverage for each place at which business is transacted shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the employer and such other information as the department deems necessary and shall be posted conspicuously at the place of business for which it is issued. Where a place of business of the employer is changed, the employer must notify the department within thirty days of the new address and a new certificate shall be issued for the new place of business. No employer may engage in any business for which taxes are due under this title without having a certificate of coverage in compliance with this section, except that the department, by general rule, may provide for the issuance of a certificate of coverage to employers with temporary places of business. [1986 c 9 § 1.]

Engaging in business without certificate of coverage—Unlawful actions—Penalties: RCW 51.48.103.

51.04.130 Industrial insurance coverage for Hanford workers—Special agreements. The department of labor and industries upon the request of the secretary of defense of the United States or the secretary of the United States department of energy, may in its discretion approve special insuring agreements providing industrial insurance coverage for workers engaged in the performance of work, either directly or indirectly, for the United States, regarding projects and contracts at the Hanford Nuclear Reservation. The agreements need not conform to the requirements specified in the industrial insurance law of this state if the department finds that the application of the plan will effectively aid the national interest. The department may also approve or direct changes or modifications of the agreements as it deems necessary.

An agreement entered into under this section remains in full force and effect for as long as the department deems it necessary to accomplish the purposes of this section. [1997 c 109 § 1; 1951 c 144 § 1.]

Additional notes found at www.leg.wa.gov

51.04.150 Education and outreach—Workers' compensation, premium responsibilities, and independent contractor issues. The department shall conduct education and outreach to employers on workers' compensation

requirements and premium responsibilities, including independent contractor issues. The department shall work with new employers on an individual basis and also establish mass education campaigns. [2009 c 432 § 10.]

Report—2009 c 432: See RCW 18.27.800.

51.04.153 Fraud—Underground economy—Finding—Use of best practices. (1) The legislature finds that the department is successfully addressing employer fraud and the underground economy, helping ensure that employers who appropriately report and pay premiums can be competitive. Efforts focus on prevention, education, and enforcement by identifying industries for targeted audits, informing industry members and providing the opportunity for voluntary compliance, and ultimately identifying employers for audit based on proven criteria.

(2) To ensure the appropriate use of workers' compensation funds, the legislature directs the department of labor and industries to continue applying these proven best practices to employer fraud and to apply the same best practices to address instances of worker and provider fraud, including but not limited to:

(a) Participating in a national information exchange with other workers' compensation insurers to avoid duplication of claims and benefits;

(b) Increasing public awareness of employer, worker, and provider fraud issues and how to report suspected fraud;

(c) Establishing criteria for the periodic review of total permanent disability pension recipients including their level of disability and physical activity to determine whether they can be gainfully employed; and

(d) Identifying provider billing patterns to target potentially abusive practices.

(3) The provisions of RCW 51.28.070 shall not be a barrier to the department's participation in a national information exchange as required in subsection (2)(a) of this section.

(4) The department's activities must include approaches to prevent, educate, and ensure compliance by providers, employers, and workers. The department shall provide a report to the governor and the appropriate legislative committees by December 1, 2012, that describes the agency's efforts and outcomes and makes recommendations for statutory changes to address barriers for successfully addressing provider, employer, and worker fraud. [2011 1st sp.s. c 37 § 701.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.160 Logger safety initiative—Task force—Report. (1) The department shall include one or more representatives of logging industry workers on the logger safety task force. In addition, the department shall reach out to all employers in the logging industry, including those having one or more on the job fatalities in the last five years, and invite them to participate in the logger safety initiative. All participants must comply with the requirements of the logger safety initiative.

(2) By December 31, 2013, the department shall report back to the appropriate committees of the legislature on the development and implementation of the logger safety initiative. The report shall provide a status update on implementa-

tion of the initiative and participation in the safety program, including a description and summary of the worker training and supervision standards and the certification process for individual companies. The report shall also contain a description and summary of any industrial insurance rate reduction or other incentive for rate year 2014 that will be applied to employers participating in the initiative. The report may provide recommendations for legislative consideration to further the goals of the initiative. [2013 c 339 § 2.]

Findings—Intent—2013 c 339: "The legislature finds that many Washington workers involved in manual logging in the logging industry suffer industrial injuries with greater frequency and severity than workers in other industries. The legislature further finds that the incidence and severity of injury is particularly high among young workers during the early periods of employment in manual logging. The legislature recognizes the importance of improving safety performance in the logging industry to reduce industrial injuries for workers and resulting workers' compensation premium rates for employers. The legislature acknowledges that industry participants, including private land owners, timber industry employers, the department of natural resources, and the department of labor and industries, have formed a logger safety task force to develop and implement a logger safety initiative. The goal of the initiative is to reduce the frequency and severity of injuries in the logging industry. The task force will create a program that will establish sector-wide standards for worker training and supervision; establish a certification process for individual company safety programs; and review the progress of logging operations through mandatory performance-based audits. The legislature further recognizes that as the safety culture in the logging industry evolves, the frequency and severity of injuries will decrease, which will drive down industrial insurance costs for logging industry employers. While the industrial insurance costs will decline over time as safety improves, the legislature acknowledges that an immediate reduction in industrial insurance rates for the 2014 rate year for participating logging employers provides an additional incentive for these employers to commit to the logger safety initiative. Therefore, the legislature intends to monitor development and implementation of the logger safety initiative." [2013 c 339 § 1.]

51.04.165 Information about scholarship opportunities—Costs. The department may provide information about scholarship opportunities offered by nonprofit organizations and available to children and spouses of workers who suffered an injury in the course of employment resulting in death or permanent total disability. The department may, in its sole discretion, provide information about one or more scholarship opportunities. The cost of printing and inserting materials, any additional mailing costs, and any other related costs must be borne by the scholarship organization. [2013 c 134 § 2.]

Chapter 51.08 RCW DEFINITIONS

Sections

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51.08.010 Meaning of words. Unless the context indicates otherwise, words used in this title shall have the meaning given in this chapter. [1961 c 23 § 51.08.010. Prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.012 "Accredited school." For the purposes of this title, "accredited school" means a school or course of instruction which is:

(1) Approved by the state superintendent of public instruction, the state board of education, the *state board for community college education, or the state division of vocational education of the **coordinating council for occupational education; or

(2) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW. [1975 1st ex.s. c 224 § 2; 1969 ex.s. c 77 § 3.]

Reviser's note: *(1) The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

** (2) The coordinating council for occupational education was abolished by 1975 1st ex.s. c 174 § 9.

Additional notes found at www.leg.wa.gov

51.08.013 "Acting in the course of employment." (1) "Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

(2) "Acting in the course of employment" does not include:

(a) Time spent going to or coming from the employer's place of business in an alternative commute mode, notwithstanding that the employer (i) paid directly or indirectly, in whole or in part, the cost of a fare, pass, or other expense associated with the alternative commute mode; (ii) promoted and encouraged employee use of one or more alternative

commute modes; or (iii) otherwise participated in the provision of the alternative commute mode.

(b) An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

(3) "Alternative commute mode" means (a) a carpool or vanpool arrangement whereby a group of at least two but not more than fifteen persons including passengers and driver, is transported between their places of abode or termini near those places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution; (b) a bus, ferry, or other public transportation service; or (c) a nonmotorized means of commuting such as bicycling or walking. [1997 c 250 § 10; 1995 c 179 § 1; 1993 c 138 § 1; 1979 c 111 § 15; 1977 ex.s. c 350 § 8; 1961 c 107 § 3.]

Additional notes found at www.leg.wa.gov

51.08.014 "Agriculture." "Agriculture" means the business of growing or producing any agricultural or horticultural produce or crop, including the raising of any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. [1971 ex.s. c 289 § 75.]

Additional notes found at www.leg.wa.gov

51.08.015 "Amount," "payment," "premium," "contribution," "assessment." Wherever and whenever in any of the provisions of this title relating to any payments by an employer or worker the words "amount" and/or "amounts," "payment" and/or "payments," "premium" and/or "premiums," "contribution" and/or "contributions," and "assessment" and/or "assessments" appear said words shall be construed to mean taxes, which are the money payments by an employer or worker which are required by this title to be made to the state treasury for the accident fund, the medical aid fund, the supplemental pension fund, or any other fund created by this title. [1977 ex.s. c 350 § 9; 1972 ex.s. c 43 § 3; 1961 c 23 § 51.08.015. Prior: 1959 c 308 § 25.]

51.08.018 "Average monthly wage." For purposes of this title, the average monthly wage in the state shall be the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve. [1977 ex.s. c 323 § 3; 1971 ex.s. c 289 § 15.]

Additional notes found at www.leg.wa.gov

51.08.020 "Beneficiary." "Beneficiary" means a husband, wife, child, or dependent of a worker in whom shall vest a right to receive payment under this title: PROVIDED, That a husband or wife of an injured worker, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the

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period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for maintenance, shall be deemed living in a state of abandonment. [1977 ex.s. c 350 § 10; 1973 1st ex.s. c 154 § 91; 1961 c 23 § 51.08.020. Prior: 1957 c 70 § 6; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Additional notes found at www.leg.wa.gov

51.08.030 "Child." "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the worker, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap. [1986 c 293 § 1; 1980 c 14 § 4. Prior: 1977 ex.s. c 323 § 4; 1977 ex.s. c 80 § 36; 1975-'76 2nd ex.s. c 42 § 37; 1972 ex.s. c 65 § 1; 1969 ex.s. c 77 § 1; 1961 c 23 § 51.08.030; prior: 1957 c 70 § 7; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1941 c 209 § 3, part; Rem. Supp. 1941 § 7679, part.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

51.08.040 "Department." "Department" means department of labor and industries. [1961 c 23 § 51.08.040.]

Department of labor and industries: Chapter 43.22 RCW.

51.08.050 "Dependent." "Dependent" means any of the following named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower, or child, viz: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the worker. [1997 c 325 § 6; 1977 ex.s. c 350 § 11; 1961 c 23 § 51.08.050. Prior: 1957 c 70 § 8; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.060 "Director." "Director" means the director of labor and industries. [1961 c 23 § 51.08.060.]

51.08.070 "Employer"—Exception. "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who con-

tracts with one or more workers, the essence of which is the personal labor of such worker or workers. Or as an exception to the definition of employer, persons or entities are not employers when they contract or agree to remunerate the services performed by an individual who meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW. [2008 c 102 § 2; 1991 c 246 § 2; 1981 c 128 § 1; 1977 ex.s. c 350 § 12; 1971 ex.s. c 289 § 1; 1961 c 23 § 51.08.070. Prior: 1957 c 70 § 9; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Conflict with federal requirements—2008 c 102: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination may not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2008 c 102 § 6.]

Severability—2008 c 102: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 102 § 7.]

Additional notes found at www.leg.wa.gov

51.08.095 "Health services provider"—"Provider." "Health services provider" or "provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. [1986 c 200 § 12.]

51.08.100 "Injury." "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom. [1961 c 23 § 51.08.100. Prior: 1959 c 308 § 3; 1957 c 70 § 12; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.110 "Invalid." "Invalid" means one who is physically or mentally incapacitated from earning. [1961 c 23 § 51.08.110. Prior: 1957 c 70 § 13; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.140 "Occupational disease." "Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. [1961 c 23 § 51.08.140. Prior: 1959 c 308 § 4; 1957 c 70 § 16; prior: 1951 c 236 § 1;

1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

51.08.142 "Occupational disease"—Exclusion of mental conditions caused by stress. The department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140. [1988 c 161 § 16.]

51.08.150 "Permanent partial disability." "Permanent partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. [1961 c 23 § 51.08.150. Prior: 1957 c 70 § 17; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.160 "Permanent total disability." "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation. [1977 ex.s. c 350 § 13; 1961 c 23 § 51.08.160. Prior: 1957 c 70 § 18; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.173 "Self-insurer." "Self-insurer" means an employer or group of employers which has been authorized under this title to carry its own liability to its employees covered by this title. [1983 c 174 § 1; 1971 ex.s. c 289 § 80.]

Additional notes found at www.leg.wa.gov

51.08.175 "State fund"—"State of Washington industrial insurance fund." "State fund" means those funds held by the state or any agency thereof for the purposes of this title. The "state of Washington industrial insurance fund" means the department when acting as the agency to insure the industrial insurance obligation of employers. The terms "state fund" and "state of Washington industrial insurance fund" shall be deemed synonymous when applied to the functions of the department connected with the insuring of employers who secure the payment of industrial insurance benefits through the state. The director shall manage the state fund and the state of Washington industrial insurance fund and shall have such powers as are necessary to carry out its functions and may reinsure any risk insured by the state fund [1977 ex.s. c 323 § 5; 1972 ex.s. c 43 § 5; 1971 ex.s. c 289 § 88.]

Additional notes found at www.leg.wa.gov

51.08.177 "Successor." "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the tax-

payer's business, a major part of the property, whether real or personal, tangible or intangible, of the taxpayer. [2004 c 243 § 1; 1986 c 9 § 3.]

Additional notes found at www.leg.wa.gov

51.08.178 "Wages"—Monthly wages as basis of compensation—Computation thereof. (1) For the purposes of this title, the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the worker's wages are not fixed by the month, they shall be determined by multiplying the daily wage the worker was receiving at the time of the injury:

- (a) By five, if the worker was normally employed one day a week;
- (b) By nine, if the worker was normally employed two days a week;
- (c) By thirteen, if the worker was normally employed three days a week;
- (d) By eighteen, if the worker was normally employed four days a week;
- (e) By twenty-two, if the worker was normally employed five days a week;
- (f) By twenty-six, if the worker was normally employed six days a week;
- (g) By thirty, if the worker was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer as part of the contract of hire, but shall not include overtime pay except in cases under subsection (2) of this section. As consideration of like nature to board, housing, and fuel, wages shall also include the employer's payment or contributions, or appropriate portions thereof, for health care benefits unless the employer continues ongoing and current payment or contributions for these benefits at the same level as provided at the time of injury. However, tips shall also be considered wages only to the extent such tips are reported to the employer for federal income tax purposes. The daily wage shall be the hourly wage multiplied by the number of hours the worker is normally employed. The number of hours the worker is normally employed shall be determined by the department in a fair and reasonable manner, which may include averaging the number of hours worked per day.

(2) In cases where (a) the worker's employment is exclusively seasonal in nature or (b) the worker's current employment or his or her relation to his or her employment is essentially part-time or intermittent, the monthly wage shall be determined by dividing by twelve the total wages earned, including overtime, from all employment in any twelve successive calendar months preceding the injury which fairly represent the claimant's employment pattern.

(3) If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages.

(4) In cases where a wage has not been fixed or cannot be reasonably and fairly determined, the monthly wage shall be

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computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed. [2007 c 297 § 1; 1988 c 161 § 12; 1980 c 14 § 5. Prior: 1977 ex.s. c 350 § 14; 1977 ex.s. c 323 § 6; 1971 ex.s. c 289 § 14.]

Application—2007 c 297 § 1: "Section 1 of this act applies to all wage determinations issued on or after July 22, 2007." [2007 c 297 § 2.]

Additional notes found at www.leg.wa.gov

51.08.180 "Worker"—Exceptions. "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as an exception to the definition of worker, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier. [2008 c 102 § 3; 1991 c 246 § 3; 1987 c 175 § 3; 1983 c 97 § 1; 1982 c 80 § 1; 1981 c 128 § 2; 1977 ex.s. c 350 § 15; 1961 c 23 § 51.08.180. Prior: 1957 c 70 § 20; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1937 c 211 § 2; RRS § 7674-1.]

Conflict with federal requirements—Severability—2008 c 102: See notes following RCW 51.08.070.

Additional notes found at www.leg.wa.gov

51.08.181 "Worker"—Registered contractor and electrician exclusions. For the purposes of this title, any individual performing services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW for remuneration under an independent contract is not a worker when:

(1) The individual has been, and will continue to be, free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW. [2008 c 102 § 5.]

Conflict with federal requirements—Severability—2008 c 102: See notes following RCW 51.08.070.

51.08.185 "Employee." "Employee" shall have the same meaning as "worker" when the context would so indicate, and shall include all officers of the state, state agencies, counties, municipal corporations, or other public corporations, or political subdivisions. [1977 ex.s. c 350 § 16; 1972 ex.s. c 43 § 4.]

51.08.195 "Employer" and "worker"—Additional exception. As an exception to the definition of "employer" under RCW 51.08.070 and the definition of "worker" under RCW 51.08.180, services performed by an individual for remuneration shall not constitute employment subject to this title if it is shown that:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact; and

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the con-

tract, the individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting. [2008 c 102 § 4; 1991 c 246 § 1.]

Conflict with federal requirements—Severability—2008 c 102: See notes following RCW 51.08.070.

Additional notes found at www.leg.wa.gov

51.08.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 138.]

Chapter 51.12 RCW

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

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Health and safety of underground workers: Chapter 49.24 RCW.

51.12.010 Employments included—Declaration of policy. There is a hazard in all employment and it is the purpose of this title to embrace all employments which are within the legislative jurisdiction of the state.

This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment. [1972 ex.s. c 43 § 6; 1971 ex.s. c 289 § 2; 1961 c 23 § 51.12.010. Prior: 1959 c 55 § 1; 1955 c 74 § 2; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

51.12.020 Employments excluded. The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400 may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within

the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010, or a surplus line broker licensed under chapter 48.15 RCW.

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation.

(14) A driver providing commercial transportation services as defined in RCW 48.177.005. The driver may elect coverage in the manner provided by RCW 51.32.030.

(15) For hire vehicle operators under chapter 46.72 RCW who own or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW who own or lease the limousine, and operators of taxicabs under chapter 81.72 RCW who own or lease the taxicab. An owner or lessee may elect coverage in the manner provided by RCW 51.32.030. [2015 c 236 § 4; 2013 c 141 § 3; 2009 c 162 § 33; 2008 c 217 § 98; 1999 c 68 § 1; 1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020;

prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Additional notes found at www.leg.wa.gov

51.12.025 Persons working on parents' family farms—Optional exclusion from coverage. (1) The parent or parents of a person at least eighteen years of age but under twenty-one years of age may elect to exclude from mandatory coverage under this title the parent's employment of that person in agricultural activities on their family farm if:

(a) The person resides with his or her parent or parents or resides on their family farm; and

(b) The parent or parents file a written notice with the department electing exclusion from coverage.

(2) A parent or parents who have elected to exclude a person under this subsection may subsequently obtain coverage for that person under RCW 51.12.110. [1996 c 8 § 1.]

51.12.035 Volunteers. (1) Volunteers shall be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW.

A "volunteer" shall mean a person who performs any assigned or authorized duties for the state or any agency thereof, except emergency services workers as described by chapter 38.52 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by the state or any agency thereof, prior to the occurrence of the injury or the contraction of an occupational disease, for the purpose of engaging in authorized volunteer service: PROVIDED, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties.

Any and all premiums or assessments due under this title on account of such volunteer service shall be the obligation of and be paid by the state or any agency thereof which has registered and accepted the services of volunteers.

(2) Except as provided in RCW 51.12.050, volunteers may be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW at the option of any city, county, town, special district, municipal corporation, or political subdivision of any type, or any private nonprofit charitable organization, when any such unit of local government or any such nonprofit organization has given notice of covering all of its volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

A "volunteer" shall mean a person who performs any assigned or authorized duties for any such unit of local government, or any such organization, except emergency services workers as described by chapter 38.52 RCW, or firefighters covered by chapter 41.24 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by any such unit of local government, or any such organization which has given such notice,

for the purpose of engaging in authorized volunteer services: PROVIDED, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties: PROVIDED FURTHER, That juveniles performing community restitution under chapter 13.40 RCW may not be granted coverage as volunteers under this section.

Any and all premiums or assessments due under this title on account of such volunteer service for any such unit of local government, or any such organization shall be the obligation of and be paid by such organization which has registered and accepted the services of volunteers and exercised its option to secure the medical aid benefits under chapter 51.36 RCW for such volunteers. [2002 c 175 § 39; 2001 c 138 § 3; 1981 c 266 § 3; 1977 ex.s. c 350 § 17; 1975 1st ex.s. c 79 § 1; 1974 ex.s. c 171 § 44; 1971 c 20 § 1.]

Finding—Purpose—2001 c 138: See note following RCW 51.12.050.

Additional notes found at www.leg.wa.gov

51.12.045 Offenders performing community restitution. Offenders performing community restitution pursuant to court order or under RCW 13.40.080 may be deemed employees and/or workers under this title at the option of the state, county, city, town, or nonprofit organization under whose authorization the community restitution is performed. Any premiums or assessments due under this title for community restitution work shall be the obligation of and be paid for by the state agency, county, city, town, or nonprofit organization for which the offender performed the community restitution. Coverage commences when a state agency, county, city, town, or nonprofit organization has given notice to the director that it wishes to cover offenders performing community restitution before the occurrence of an injury or contraction of an occupational disease. [2002 c 175 § 40; 1986 c 193 § 1; 1984 c 24 § 4; 1981 c 266 § 1.]

Offenders treated as employees or workers by local governments: RCW 35.21.209, 35A.21.220, 36.16.139.

Additional notes found at www.leg.wa.gov

51.12.050 Public entity work—Partnerships with volunteer groups and businesses for community improvement projects. (1) Whenever a public entity engages in any work, or let a contract therefor, in which workers are employed for wages, this title shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the public entity. If the work is being done by contract, the payroll of the contractor and the subcontractor shall be the basis of computation and, in the case of contract work consuming less than one year in performance, the required payment into the accident fund shall be based upon the total payroll. The contractor and any subcontractor shall be subject to the provisions of this title, and the state for its general fund, the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his or her proportionate amount of the payment.

(2)(a) A public entity may seek partnerships with volunteer groups and businesses to engage in community improve-

ment projects to benefit the public entity. In administering a project, the public entity must:

(i) Provide prospective donors and participants written notice of the risks and responsibilities to be assumed by the public entity and the donors or participants. A volunteer donating labor on the project must, before beginning work, document in writing that he or she has received the notice and that he or she is donating labor as a result of his or her own free choice; and

(ii) Pay premiums and assessments required under this title to secure medical aid benefits under chapter 51.36 RCW for volunteers donating labor on the project.

(b) A contractor or employer donating equipment or materials for use on a community improvement project shall not, for the purposes of this title, be considered the employer of an individual donating labor unless the contractor or employer pays the individual wages for working on the project or makes working on the project a condition of employment. This subsection applies regardless of whether:

(i) The contractor or employer informs the individual about the community improvement project or encourages the individual to donate labor on the project;

(ii) The individual uses equipment or materials on the project that are donated by the contractor or the individual's employer; or

(iii) The individual is granted maintenance or reimbursement for actual expenses necessarily incurred in performing labor for the project.

(3) Whenever and so long as, by state law, city charter, or municipal ordinance, provision is made for employees or peace officers injured in the course of employment, such employees shall not be entitled to the benefits of this title and shall not be included in the payroll of the municipality under this title: PROVIDED, That whenever any state law, city charter, or municipal ordinance only provides for payment to the employee of the difference between his or her actual wages and that received under this title such employees shall be entitled to the benefits of this title and may be included in the payroll of the municipality.

(4) The definitions in this subsection apply throughout this section, unless the context clearly requires otherwise.

(a) "Community improvement project" means a project sponsored by a public entity that uses donated labor, materials, or equipment and includes, but is not limited to, projects to repair, restore, or preserve historic property.

(b) "Historic property" means real property owned by a public entity including, but not limited to, barns, schools, military structures, and cemeteries.

(c) "Public entity" means the state, county, any municipal corporation, or other taxing district. [2001 c 138 § 2; 1977 ex.s. c 350 § 18; 1972 ex.s. c 43 § 8; 1961 c 23 § 51.12.050. Prior: 1955 c 74 § 6; prior: (i) 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

Finding—Purpose—2001 c 138: "The legislature finds that government and business partnerships on projects for community improvement can assist communities to preserve historic property and create opportunities for volunteer service. The legislature also recognizes that uncertainty about risks and obligations may deter employers who would otherwise be willing to donate materials and equipment to a community project. The purpose of this act is to encourage participation by establishing clear criteria for determining

industrial insurance obligations with respect to donated labor on certain community projects." [2001 c 138 § 1.]

51.12.060 Federal projects. The application of this title and related safety laws is hereby extended to all lands and premises owned or held by the United States of America, by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of the state of Washington, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which are within the exterior boundaries of the state, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the state, and as fully as is permitted under the provisions of that act of the congress of the United States approved June 25, 1936, granting to the several states jurisdiction and authority to apply their state workers' compensation laws on all property and premises belonging to the United States of America, being 49 United States Statutes at large 1938, title 40, section 290 United States code, 1958 edition: PROVIDED, That this title shall not apply to employees of the United States of America. [1977 ex.s. c 350 § 19; 1961 c 23 § 51.12.060. Prior: 1937 c 147 § 1; RRS § 7676-2.]

51.12.070 Work done by contract—Subcontractors—Nonemergency transportation brokers. The provisions of this title apply to all work done by contract; the person, firm, or corporation who lets a contract for such work is responsible primarily and directly for all premiums upon the work, except as provided in subsection (2) of this section. The contractor and any subcontractor are subject to the provisions of this title and the person, firm, or corporation letting the contract is entitled to collect from the contractor the full amount payable in premiums and the contractor in turn is entitled to collect from the subcontractor his or her proportionate amount of the payment.

(1) For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not responsible for any premiums upon the work of any subcontractor if:

(a) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(b) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(c) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business;

(d) The subcontractor has contracted to perform:

(i) The work of a contractor as defined in RCW 18.27.010; or

(ii) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW; and

(e) The subcontractor has an industrial insurance account in good standing with the department or is a self-insurer. For the purposes of this subsection (1)(e), a contractor may consider a subcontractor's account to be in good standing if,

within a year prior to letting the contract or master service agreement, and at least once a year thereafter, the contractor has verified with the department that the account is in good standing and the contractor has not received written notice from the department that the subcontractor's account status has changed. Acceptable documentation of verification includes a department document which includes an issued date or a dated printout of information from the department's internet web site showing a subcontractor's good standing. The department shall develop an approach to provide contractors with verification of the date of inquiries validating that the subcontractor's account is in good standing.

It is unlawful for any county, city, or town to issue a construction building permit to any person who has not submitted to the department an estimate of payroll and paid premium thereon as provided by chapter 51.16 RCW of this title or proof of qualification as a self-insurer.

(2) Nonemergency transportation brokers that operate as not-for-profit businesses are not liable for any premiums of a subcontractor if the provisions of subsection (1)(c) and (e) of this section are met throughout the term of the contract. For purposes of this section, nonemergency transportation brokers are those organizations or entities that contract with the state health care authority, or its successor, to arrange non-emergency transportation for qualified clients. [2014 c 193 § 1; 2004 c 243 § 2; 1981 c 128 § 4; 1971 ex.s. c 289 § 81; 1965 ex.s. c 20 § 1; 1961 c 23 § 51.12.070. Prior: 1955 c 74 § 7; prior: 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part.]

Additional notes found at www.leg.wa.gov

51.12.080 Railway employees. Inasmuch as it has proved impossible in the case of employees of common carriers by railroad, engaged in maintenance and operation of railroads doing interstate, foreign, and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interstate or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this title, the provisions of this title shall not apply to work performed by such employees in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees of such common carriers by railroad engaged therein, but nothing herein shall be construed as excluding from the operation of this title railroad construction work, or the employees engaged thereon: PROVIDED, That common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee, to the surviving spouse and child, or children, and if no surviving spouse or child or children, then to the parents, minor sisters, or minor brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce: PROVIDED FURTHER, That if any

interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this title or bring under the foregoing proviso of this section any work of such other enterprise or industry, the payroll of which may be clearly separable and distinguishable from the payroll of the maintenance or operation of such railroad, or of the maintenance or construction of its equipment: PROVIDED FURTHER, That nothing in this section shall be construed as relieving an independent contractor engaged through or by his or her employees in performing work for a common carrier by railroad, from the duty of complying with the terms of this title, nor as depriving any employee of such independent contractor of the benefits of this title. [2010 c 8 § 14002; 1973 1st ex.s. c 154 § 92; 1972 ex.s. c 43 § 9; 1961 c 23 § 51.12.080. Prior: 1925 ex.s. c 84 § 1; 1919 c 67 § 1; 1917 c 29 § 19; 1911 c 74 § 18; RRS § 7693.]

Additional notes found at www.leg.wa.gov

51.12.090 Intrastate and interstate commerce. The provisions of this title shall apply to employers and workers (other than railways and their workers) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the congress of the United States, only to the extent that the payroll of such workers may and shall be clearly separable and distinguishable from the payroll of workers engaged in interstate or foreign commerce: PROVIDED, That as to workers whose payroll is not so clearly separable and distinguishable the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of RCW 51.12.080: PROVIDED FURTHER, That nothing in this title shall be construed to exclude goods or materials and/or workers brought into this state for the purpose of engaging in work. [1983 c 170 § 1; 1982 c 63 § 16; 1977 ex.s. c 350 § 20; 1972 ex.s. c 43 § 10; 1961 c 23 § 51.12.090. Prior: 1959 c 308 § 10; 1919 c 67 § 3; RRS § 7695.]

Additional notes found at www.leg.wa.gov

51.12.095 Common carrier employees—Owners and operators of trucks. (1) Common or contract carriers doing business in this state that are engaged exclusively in interstate or foreign commerce, or any combination thereof, shall provide coverage under this title for their Washington employees, unless the employer has furnished workers' compensation insurance coverage under the laws of another state for the coverage of employees in this state: PROVIDED, That any common or contract carrier or its successor that formerly had coverage under this title and by virtue of being exclusively engaged in interstate or foreign commerce, or any combination thereof, withdrew its acceptance of liability under this title by filing written notice with the director of the withdrawal of its acceptance prior to January 2, 1987, shall be governed by the provisions of this section that were in effect as of that date.

(2) A person who is domiciled in this state and who owns and operates a truck engaged in intrastate, interstate, or for-

eign commerce, or any combination thereof, may elect coverage under this title in the manner provided by RCW 51.32.030, whether or not the truck is leased to a common or contract carrier. [1989 c 368 § 1; 1983 c 170 § 2.]

Additional notes found at www.leg.wa.gov

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise—Geoduck harvesting. (1) Except as otherwise provided in this section, the provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws or federal employees' compensation act for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made both under this title and under the maritime laws or federal employees' compensation act, such benefits paid under this title shall be repaid by the worker or beneficiary. For any claims made under the Jones Act, the employer is deemed a third party, and the injured worker's cause of action is subject to RCW 51.24.030 through 51.24.120.

(5) Commercial divers harvesting geoduck clams under an agreement made pursuant to RCW 79.135.210 and the employers of such divers shall be subject to the provisions of this title whether or not such work is performed from a vessel. [2008 c 70 § 1; 2007 c 324 § 1; 1991 c 88 § 3; 1988 c 271 § 2; 1977 ex.s. c 350 § 21; 1975 1st ex.s. c 224 § 3; 1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Effective date—2008 c 70: "This act takes effect January 1, 2009." [2008 c 70 § 2.]

Ferry system employees in extrahazardous employment: RCW 47.64.070.

Additional notes found at www.leg.wa.gov

51.12.102 Maritime workers—Asbestos-related disease. (1) The department shall furnish the benefits provided under this title to any worker or beneficiary who may have a right or claim for benefits under the maritime laws of the United States resulting from an asbestos-related disease if (a) there are objective clinical findings to substantiate that the worker has an asbestos-related claim for occupational disease and (b) the worker's employment history has a prima facie indicia of injurious exposure to asbestos fibers while employed in the state of Washington in employment covered

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under this title. The department shall render a decision as to the liable insurer and shall continue to pay benefits until the liable insurer initiates payments or benefits are otherwise properly terminated under this title.

(2) The benefits authorized under subsection (1) of this section shall be paid from the medical aid fund, with the self-insurers and the state fund each paying a pro rata share, based on number of worker hours, of the costs necessary to fund the payments. For the purposes of this subsection only, the employees of self-insured employers shall pay an amount equal to one-half of the share charged to the self-insured employer.

(3) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a self-insurer or the state fund, then the self-insurer or state fund shall reimburse the medical aid fund for all benefits paid and costs incurred by the fund.

(4) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program other than the federal social security, old age survivors, and disability insurance act, 42 U.S.C. or an insurer under the maritime laws of the United States:

(a) The department shall pursue the federal program insurer on behalf of the worker or beneficiary to recover from the federal program insurer the benefits due the worker or beneficiary and on its own behalf to recover the benefits previously paid to the worker or beneficiary and costs incurred;

(b) For the purpose of pursuing recovery under this subsection, the department shall be subrogated to all of the rights of the worker or beneficiary receiving compensation under subsection (1) of this section; and

(c) The department shall not pursue the worker or beneficiary for the recovery of benefits paid under subsection (1) of this section unless the worker or beneficiary receives recovery from the federal program insurer, in addition to receiving benefits authorized under this section. The director may exercise his or her discretion to waive, in whole or in part, the recovery of any such benefits where the recovery would be against equity and good conscience.

(d) Actions pursued against federal program insurers determined by the department to be liable for benefits under this section may be prosecuted by special assistant attorneys general. The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate actions under this subsection. Attorneys' fees and costs shall be paid in conformity with applicable federal and state law. Any legal costs remaining as an obligation of the department shall be paid from the medical aid fund.

(5) The provisions of subsection (1) of this section shall not apply if the worker or beneficiary refuses, for whatever reason, to assist the department in making a proper determination of coverage. If a worker or beneficiary refuses to cooperate with the department, self-insurer, or federal program insurer by failing to provide information that, in the

opinion of the department, is relevant in determining the liable insurer, or if a worker refuses to submit to medical examination, or obstructs or fails to cooperate with the examination, or if the worker or beneficiary fails to cooperate with the department in pursuing benefits from the federal program insurer, the department shall reject the application for benefits. No information obtained under this section is subject to release by subpoena or other legal process.

(6) The amount of any third party recovery by the worker or beneficiary shall be subject to a lien by the department to the full extent that the medical aid fund has not been otherwise reimbursed by another insurer. Reimbursement shall be made immediately to the medical aid fund upon recovery from the third party suit. If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program insurer, the department shall not participate in the costs or attorneys' fees incurred in bringing the third party suit. [1993 c 168 § 1; 1988 c 271 § 1.]

Additional notes found at www.leg.wa.gov

51.12.110 Elective adoption—Withdrawal—Cancellation. Any employer who has in his or her employment any person or persons excluded from mandatory coverage pursuant to RCW 51.12.020 may file notice in writing with the director, on such forms as the department may provide, of his or her election to make such persons otherwise excluded subject to this title. The employer shall forthwith display in a conspicuous manner about his or her works, and in a sufficient number of places to reasonably inform his or her workers of the fact, printed notices furnished by the department stating that he or she has so elected. Said election shall become effective upon the filing of said notice in writing. The employer and his or her workers shall be subject to all the provisions of this title and entitled to all of the benefits thereof: PROVIDED, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his or her acceptance of liability under this title by filing written notice with the director of the withdrawal of his or her acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected worker or workers work and shall otherwise notify personally the affected workers. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

The department shall have the power to cancel the elective adoption coverage if any required payments or reports have not been made. Cancellation by the department shall be no later than thirty days from the date of notice in writing by the department advising of cancellation being made. [1991 c 246 § 5; 1982 c 63 § 17; 1980 c 14 § 6. Prior: 1977 ex.s. c 350

§ 22; 1977 ex.s. c 323 § 8; 1971 ex.s. c 289 § 85; 1961 c 23 § 51.12.110; prior: 1959 c 308 § 11; 1929 c 132 § 5; 1923 c 136 § 6; 1911 c 74 § 19; RRS § 7696.]

Additional notes found at www.leg.wa.gov

51.12.120 Extraterritorial coverage. (1) If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had the injury occurred within this state, the worker, or his or her beneficiaries, shall be entitled to compensation under this title if at the time of the injury:

(a) His or her employment is principally localized in this state; or

(b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or

(d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation or other recoveries, including settlement proceeds, under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title if that claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation or other recoveries, including settlement proceeds, paid or awarded the worker or beneficiary under such other workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

(3)(a) An employer not domiciled in this state who is employing workers in this state in work for which the employer must be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or prequalified under RCW 47.28.070, must secure the payment of compensation under this title by:

(i) Insuring the employer's workers' compensation obligation under this title with the department;

(ii) Being qualified as a self-insurer under this title; or

(iii) For employers domiciled in a state or province of Canada subject to an agreement entered into under subsection (7) of this section, as permitted by the agreement, filing with the department a certificate of coverage issued by the agency that administers the workers' compensation law in the employer's state or province of domicile certifying that the employer has secured the payment of compensation under the other state's or province's workers' compensation law.

(b) The department shall adopt rules to implement this subsection.

(4) If a worker or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state or province of Canada and the employer:

(a) Is not subject to subsection (3) of this section and has neither opened an account with the department nor qualified

as a self-insurer under this title, the employer or his or her insurance carrier shall file with the director a certificate issued by the agency that administers the workers' compensation law in the state of the employer's domicile, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the worker or beneficiary is entitled to the benefits provided under the other state's law.

(b) Has filed a certificate under subsection (3)(a)(iii) of this section or (a) of this subsection (4):

(i) The filing of the certificate constitutes appointment by the employer or his or her insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(ii) The director shall send to such employer or his or her insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(iii) If the employer is a self-insurer under the workers' compensation law of the other state or province of Canada, the employer shall, upon submission of evidence or security, satisfactory to the director, of his or her ability to meet his or her liability to the claimant under this title, be deemed to be a qualified self-insurer under this title; and

(iv) If the employer's liability under the workers' compensation law of the other state or province of Canada is insured:

(A) The employer's carrier, as to such claimant only, shall be deemed to be subject to this title. However, unless the insurer's contract with the employer requires the insurer to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed the insurer's liability under the workers' compensation law of the other state or province; and

(B) If the total amount for which the employer's insurer is liable under (b)(iv)(A) of this subsection is less than the total of the compensation to which the claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title.

(c) If subject to subsection (3) of this section, has not complied with subsection (3) of this section or, if not subject to subsection (3) of this section, has neither qualified as a self-insurer nor secured insurance coverage under the workers' compensation law of another state or province of Canada, the claimant shall be paid compensation by the department and the employer shall have the same rights and obligations, and is subject to the same penalties, as other employers subject to this title.

(5) As used in this section:

(a) A person's employment is principally localized in this or another state when: (i) His or her employer has a place of business in this or the other state and he or she regularly works at or from the place of business; or (ii) if (a)(i) of this subsection is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or the other state;

(b) "Workers' compensation law" includes "occupational disease law" for the purposes of this section.

(6) A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall govern as to any injury occurring after the effective date of the agreement.

(7) The director is authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada that administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another. If the other state's or province's law requires Washington employers to secure the payment of compensation under the other state's or province's workers' compensation laws for work performed in that state or province, then employers domiciled in that state or province must purchase compensation covering their workers engaged in that work in this state under this state's industrial insurance law. When an agreement under this subsection has been executed and adopted as a rule of the department under chapter 34.05 RCW, it binds all employers and workers subject to this title and the jurisdiction of this title is governed by this rule.

(8) Washington employers who are not self-insured under chapter 51.14 RCW shall obtain workers' compensation coverage from the state fund for temporary and incidental work performed on jobs or at jobsites in another state by their Washington workers. The department is authorized to adopt rules governing premium liability and reporting requirements for hours of work in excess of temporary and incidental as defined in this chapter.

(9) "Temporary and incidental" means work performed by Washington employers on jobs or at jobsites in another state for thirty or fewer consecutive or nonconsecutive full or partial days within a calendar year. Temporary and incidental days are considered on a per state basis.

(10) By December 1, 2011, the department shall report to the workers' compensation advisory committee on the effect of this section on the revenue and costs to the state fund. [2008 c 88 § 1; 1999 c 394 § 1; 1998 c 279 § 2; 1995 c 199 § 1; 1977 ex.s. c 350 § 23; 1972 ex.s. c 43 § 12; 1971 ex.s. c 289 § 82.]

Finding—Intent—1998 c 279: "The legislature finds that a competitive disadvantage exists in the construction industry because of a disparity in workers' compensation coverage requirements among the states. The intent of this act is (1) to provide an equal footing for all contractors bidding on or engaging in construction work in this state, (2) to ensure that all workers injured while in the course of employment in this state receive the benefits to which they are entitled, and (3) to not create disincentives for employers to hire workers in this state." [1998 c 279 § 1.]

Additional notes found at www.leg.wa.gov

51.12.130 Registered apprentices or trainees. (1) All persons registered as apprentices or trainees with the state apprenticeship council and participating in supplemental and related instruction classes conducted by a school district, a community college, a vocational school, or a local joint apprenticeship committee, shall be considered as workers of the state apprenticeship council and subject to the provisions

of Title 51 RCW, for the time spent in actual attendance at such supplemental and related instruction classes.

(2) The assumed wage rate for all apprentices or trainees during the hours they are participating in supplemental and related instruction classes, shall be three dollars per hour. This amount shall be used for purposes of computations of premiums. For purposes of computing disability compensation payments, the actual wage rate during employment shall be used.

(3) Only those apprentices or trainees who are registered with the state apprenticeship council prior to their injury or death and who incur such injury or death while participating in supplemental and related instruction classes shall be entitled to benefits under the provisions of Title 51 RCW.

(4) The filing of claims for benefits under the authority of this section shall be the exclusive remedy of apprentices or trainees and their beneficiaries for injuries or death compensable under the provisions of Title 51 RCW against the state, its political subdivisions, the school district, community college, or vocational school and their members, officers or employees or any employer regardless of negligence.

(5) This section shall not apply to any apprentice or trainee who has earned wages for the time spent in participating in supplemental and related instruction classes. [1988 c 140 § 1; 1987 c 185 § 31; 1973 c 110 § 1.]

Intent—1987 c 185: "In 1977, in two separate pieces of legislation relating to industrial insurance, the Washington legislature changed certain references from "workmen's" or "workman's" compensation to "workers" compensation. The purpose of this act is to correct remaining obsolete references to "workmen's compensation" and "workmen."" [1987 c 185 § 1.]

Additional notes found at www.leg.wa.gov

51.12.140 Volunteer law enforcement officers. (1) As used in this section:

(a) "Municipal corporation" means any city, town, or county authorized by law to maintain and operate a law enforcement department;

(b) "Law enforcement department" means any regularly organized police department, sheriff's department, department of public safety, or other similar organization which has as its primary purpose the enforcement of state or local penal laws and the preservation of public order, which consists wholly of volunteer law enforcement officers or a combination of volunteer and paid law enforcement officers, and which is duly organized and maintained by a municipal corporation;

(c) "Volunteer law enforcement officer" means a person who is a member of a law enforcement department and who (i) performs assigned or authorized duties for the law enforcement department by his or her own free choice; (ii) serves in a position that is not basically clerical or secretarial in nature; (iii) is registered and accepted as a volunteer by the law enforcement department; and (iv) receives no monetary remuneration other than maintenance and reimbursement for actual expenses necessarily incurred in performing assigned duties; and

(d) "Performance of duty" includes any work in and about the volunteer law enforcement officers' quarters, police station, or any other place under the direction or general orders of the officer having the authority to order a volunteer law enforcement officer to perform the work; providing law

enforcement assistance; patrol; drill; and any work of an emergency nature performed in accordance with the rules of the law enforcement department.

(2) Any municipal corporation maintaining and operating a law enforcement department may elect to provide coverage under this title for all of its volunteer law enforcement officers for death or disability occurring in the performance of their duties as volunteer law enforcement officers. Any municipal corporation electing to provide the coverage shall file a written notice of coverage with the director.

(3) Coverage under this section shall be for all the applicable death, disability, and medical aid benefits of this title and shall be effective only for injuries which occur and occupational diseases which are contracted after the notice of coverage has been filed with the director.

Nothing in this subsection shall be construed to prohibit a municipal corporation from covering its volunteer law enforcement officers and other volunteers under RCW 51.12.035(2), as now or hereafter amended, for medical aid benefits only.

(4) Volunteer law enforcement officers for whom municipal corporations have given notice of coverage under this section shall be deemed workers or employees, as the case may be, and the performance of their duties shall be deemed employment or in the course of employment, as the case may be, for all purposes of this title except where expressly excluded or where the context clearly requires otherwise.

(5) All premiums, assessments, contributions, and penalties due under this title because coverage is provided under this section shall be the obligation of and be paid by the municipal corporation giving the notice of coverage to the director.

(6) Any municipal corporation electing coverage under this section shall maintain a time log in which the number of hours worked by each of its volunteer law enforcement officers is recorded. The log shall be made available for inspection upon the request of any authorized employee of the department.

(7) Any municipal corporation electing coverage under this section may withdraw the coverage by filing a written notice of the withdrawal with the director. The withdrawal shall become effective thirty days after filing the notice or on the date of the termination of the security for payment of compensation, whichever occurs later. At least thirty days before the effective date of the withdrawal, the municipal corporation shall notify each of its volunteer law enforcement officers of the withdrawal. Withdrawal of coverage under this section shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period in which coverage was provided. [1977 ex.s. c 113 § 1.]

Additional notes found at www.leg.wa.gov

51.12.150 Musicians and entertainers. Any musician or entertainer who performs as a member of a group or recognized entity is deemed an employee of the group or entity and the leader of the group or entity shall be required to properly register as an employer with the department and pay industrial insurance premiums on behalf of his or her employees. If a musician or entertainer is a sole performer or performs as a

partner in a group or entity, or performs on a casual basis, the musician or entertainer shall be exempted from mandatory coverage of this title. However, any such sole performer, partner, or casual performer may elect to be covered under this title and shall be subject to all the provisions and entitled to all the benefits under this title. [1983 c 252 § 2.]

Employments excluded—Musicians and entertainers: RCW 51.12.020.

51.12.160 Foreign degree-granting institutions—Employee services in country of domicile. The services of employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 51.12.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution as defined in RCW 28B.90.010 in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile. [1993 c 181 § 9.]

51.12.170 Student volunteers and unpaid students.

(1) An employer covered under this title may elect to include student volunteers or unpaid students as employees or workers for all purposes relating to medical aid benefits under chapter 51.36 RCW. The employer shall give notice of its intent to cover all of its student volunteers or unpaid students to the director prior to the occurrence of the injury or contraction of an occupational disease.

(2) A student volunteer is an enrolled student in a public school as defined in RCW 28A.150.010, a private school governed under chapter 28A.195 RCW, or a state public or private institution of higher education, who is participating as a volunteer under a program authorized by the school. The student volunteer shall perform duties for the employer without wages. The student volunteer shall be deemed to be a volunteer even if the student is granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties. A person who earns wages for the services performed is not a student volunteer.

(3) An unpaid student is an enrolled student in a state public or private institution of higher education who is participating in an unpaid work-based learning program authorized by the school. The unpaid student shall perform duties for the employer without wages but receives credit towards completing the school program, certification, or degree in return for the services provided.

(4) Any and all premiums or assessments due under this title on account of service by a student volunteer or unpaid student shall be paid by the employer who has registered and accepted the services of student volunteers or engaged in an approved student work-based learning program authorized by the school and has exercised its option to secure the medical aid benefits under chapter 51.36 RCW for the student volunteers or unpaid students.

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(5) For the purposes of this section, "unpaid student" includes a student in school-sponsored, unpaid work-based learning, including cooperative education, clinical experiences, and internship programs. [2016 c 62 § 2; 1994 c 246 § 1.]

Findings—2016 c 62: "The legislature finds that: (1) School-sponsored, unpaid work-based learning, including cooperative education, clinical experiences, and internship programs are a valuable component of many college certifications and degrees; (2) the opportunity to provide labor and industries' medical aid coverage to students in these programs will encourage employers to participate in school-sponsored, unpaid work-based learning, potentially improving employment opportunities for students; and (3) education improves economic viability in communities and in the state of Washington." [2016 c 62 § 1.]

Additional notes found at www.leg.wa.gov

51.12.175 Student volunteers and unpaid students—Hours of volunteer service option to not track. An employer who has registered and accepted the services of volunteers, student volunteers, or unpaid students, who are eligible for medical aid benefits under this chapter, may annually elect to pay the premiums and assessments due under this title at the rate due for one hundred hours of volunteer service for each volunteer, student volunteer, or unpaid student instead of tracking the actual number of hours for each volunteer, student volunteer, or unpaid student. An employer selecting this option must use the method to cover all their volunteers, student volunteers, or unpaid students for the calendar year. [2016 c 62 § 3.]

Findings—2016 c 62: See note following RCW 51.12.170.

51.12.185 For hire vehicle owners or lessees—Retrospective rating program. (1) The department may appoint a panel of individuals with for hire vehicle, limousine, or taxicab transportation industry experience and expertise to advise the department.

(2) The owner or lessee of any for hire, limousine, or taxicab vehicle is eligible for inclusion in a retrospective rating program authorized and established pursuant to chapter 51.18 RCW. [2015 c 236 § 5; 2011 c 190 § 4.]

Effective date—2011 c 190: "Except for section 3 of this act, this act takes effect January 1, 2012." [2011 c 190 § 9.]

Chapter 51.14 RCW SELF-INSURERS

Sections

SELF-INSURED EMPLOYERS

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51.14.010 Duty to secure payment of compensation—

Options. Every employer under this title shall secure the payment of compensation under this title by:

- (1) Insuring and keeping insured the payment of such benefits with the state fund; or
- (2) Qualifying as a self-insurer under this title. [1971 ex.s. c 289 § 26.]

Additional notes found at www.leg.wa.gov

51.14.020 Qualification. (1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he or she has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer. Each application for certification as a self-insurer submitted by an employer shall be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the director shall find necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer who has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

(2)(a) A self-insurer may be required by the director to supplement existing financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington filed with the department. The money, securities, bond, or letter of credit shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, bond, or letter of credit required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and

assessments and his or her probable continuity of operation. However, a letter of credit shall be acceptable only if the self-insurer has a net worth of not less than five hundred million dollars as evidenced in an annual financial statement prepared by a qualified, independent auditor using generally accepted accounting principles. The money, securities, bond, or letter of credit so deposited shall be held by the director solely for the payment of compensation by the self-insurer and his or her assessments. In the event of default the self-insurer loses all right and title to, any interest in, and any right to control the surety. The amount of surety may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(b) The letter of credit option authorized in (a) of this subsection shall not apply to self-insurers authorized under RCW 51.14.150 or to self-insurers who are counties, cities, or municipal corporations.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him or her upon his or her written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his or her proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his or her liability under this title with any reinsurer authorized to transact such reinsurance in this state: PROVIDED, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

(6) For purposes of the application of this section, the department may adopt separate rules establishing the security requirements applicable to units of local government. In setting such requirements, the department shall take into consideration the ability of the governmental unit to meet its self-insured obligations, such as but not limited to source of funds, permanency, and right of default.

(7) The director shall adopt rules to carry out the purposes of this section including, but not limited to, rules respecting the terms and conditions of letters of credit and the establishment of the appropriate level of net worth of the self-insurer to qualify for use of the letter of credit. Only letters of credit issued in strict compliance with the rules shall be deemed acceptable. [1995 c 31 § 1; 1990 c 209 § 1; 1986 c 57 § 1; 1977 ex.s. c 323 § 9; 1972 ex.s. c 43 § 16; 1971 ex.s. c 289 § 27.]

Intent—1986 c 57: See note following RCW 51.14.077.

Additional notes found at www.leg.wa.gov

51.14.030 Certification of employer as self-insurer.

The director may issue a certification that an employer is qualified as a self-insurer when such employer meets the following requirements:

- (1) He or she has fulfilled the requirements of RCW 51.14.020.
- (2) He or she has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He or she has submitted to the department a sworn itemized statement accompanied by an independent audit of the employer's books demonstrating to the director's satisfaction that the employer has sufficient liquid assets to meet his or her estimated liabilities as a self-insurer.

(4) He or she has demonstrated to the department the existence of the safety organization maintained by him or her within his or her establishment that indicates a record of accident prevention.

(5) He or she has submitted to the department a description of the administrative organization to be maintained by him or her to manage industrial insurance matters including:

- (a) The reporting of injuries;
- (b) The authorization of medical care;
- (c) The payment of compensation;
- (d) The handling of claims for compensation;
- (e) The name and location of each business location of the employer; and
- (f) The qualifications of the personnel of the employer to perform this service.

(6) He or she has demonstrated to the department the ability and commitment to submit electronically the claims [data] required by RCW 51.14.110.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification. [2005 c 145 § 3; 1977 ex.s. c 323 § 10; 1971 ex.s. c 289 § 28.]

Additional notes found at www.leg.wa.gov

51.14.040 Surety liability—Termination. (1) The surety on a bond filed by a self-insurer pursuant to this title may terminate its liability thereon by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective.

(2) In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring prior to the termination of the surety's liability.

(3) If the bond is terminated for any reason other than the employer's terminating his or her status as a self-insurer, the employer shall, prior to the date of termination of the surety's liability, otherwise comply with the requirements of this title.

(4) The liability of a surety on any bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided either such liability is secured by another bond filed, or money or securities deposited as required by this title. [2010 c 8 § 14003; 1971 ex.s. c 289 § 29.]

51.14.050 Termination of status—Notice—Financial requirements. (1) Any employer may at any time terminate his or her status as a self-insurer by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective, provided such termination shall not be effective until the employer either shall have ceased to be an employer or shall have filed with the director for state industrial insurance coverage under this title.

(2016 Ed.)

(2) An employer who ceases to be a self-insurer, and who so files with the director, must maintain money, securities, or surety bonds deemed sufficient in the director's discretion to cover the entire liability of such employer for injuries or occupational diseases to his or her employees which occurred during the period of self-insurance: PROVIDED, That the director may agree for the medical aid and accident funds to assume the obligation of such claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment of such obligations on behalf of the employer. [2010 c 8 § 14004; 1971 ex.s. c 289 § 30.]

51.14.060 Default by self-insurer—Authority of director—Liability for reimbursement. (1) The director may, in cases of default upon any obligation under this title by the self-insurer, after ten days notice by certified mail to the defaulting self-insurer of the intention to do so, bring suit upon such bond or collect the interest and principal of any of the securities as they may become due or sell the securities or any of them as may be required or apply the money deposited, all in order to pay compensation and discharge the obligations of the defaulting self-insurer under this title.

(2) The director shall be authorized to fulfill the defaulting self-insured employer's obligations under this title from the defaulting self-insured employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting self-insured employer. The defaulting self-insured employer is liable to and shall reimburse the director for the amounts necessary to fulfill the obligations of the defaulting self-insured employer that are in excess of the amounts received by the director from any bond filed, or securities or money deposited, by the defaulting self-insured employer pursuant to chapter 51.14 RCW. The amounts to be reimbursed shall include all amounts paid or payable as compensation under this title together with administrative costs, including attorneys' fees, and shall be considered taxes due the state of Washington.

(3) The department shall transfer the balance of any defaulted self-insured employer's deposit as required by RCW 51.14.020 into the insolvency trust fund when the following have occurred:

(a) All claims against the defaulted self-insured employer are closed; and

(b) The self-insured employer has been in default for ten years. [2010 c 213 § 2; 1986 c 57 § 2; 1971 ex.s. c 289 § 31.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.070 Payments upon default. Whenever compensation due under this title is not paid because of an uncorrected default of a self-insurer, such compensation shall be paid from the medical aid and accidents funds, and any monies obtained by the director from the bonds or other security provided under RCW 51.14.020 shall be deposited to the appropriate fund for the payment of compensation and administrative costs, including attorneys' fees. [1986 c 57 § 3; 1971 ex.s. c 289 § 36.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.073 Default lien. (1) In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the amounts necessary to ful-

fill the obligations of a defaulting self-insured employer together with administrative costs and attorneys' fees is a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of a default by a self-insured employer is sufficient to create the lien without any prior or subsequent action by the state. All administrators, receivers, and assignees for the benefit of creditors shall notify the director of such administration, receivership, or assignment within thirty days of their appointment or qualification.

(2) Separate and apart and in addition to the lien established by this section, the department may issue an assessment, as provided for in RCW 51.48.120, for the amount necessary to fulfill the defaulting self-insured employer's obligations, including all amounts paid and payable as compensation under this title and administrative costs, including attorneys' fees. [1986 c 57 § 4.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.077 Self-insurers' insolvency trust—Assessments—Rules. (1) A self-insurers' insolvency trust is established to provide for the unsecured benefits paid to the injured workers of self-insured employers under this title for insolvent or defaulting self-insured employers and for the department's associated administrative costs, including attorneys' fees. The self-insurers' insolvency trust shall be funded by an insolvency assessment which shall be levied on a post-insolvency basis and after the defaulting self-insured employer's security deposit, assets, and reinsurance, if any, have been exhausted. Insolvency assessments shall be imposed on all self-insured employers, except school districts, cities, and counties. The manner of imposing and collecting assessments to the insolvency fund shall be set forth in rules adopted by the department to ensure that self-insured employers pay into the fund in proportion to their claim costs. The department's rules shall provide that self-insured employers who have surrendered their certification shall be assessed for a period of not more than three calendar years following the termination date of their certification.

(2) The director shall adopt rules to carry out the purposes of this section, including but not limited to:

(a) Governing the formation of the self-insurers' insolvency trust for the purpose of this chapter;

(b) Governing the organization and operation of the self-insurers' insolvency trust to assure compliance with the requirements of this chapter;

(c) Requiring adequate accountability of the collection and disbursement of funds in the self-insurers' insolvency trust; and

(d) Any other provisions necessary to carry out the requirements of this chapter. [1986 c 57 § 6.]

Intent—1986 c 57: "It is the intent of the legislature to provide for the continuation of workers' compensation benefits in the event of the failure of a self-insured employer to meet its compensation obligations when the employer's security deposit, assets, and reinsurance are inadequate. The legislature finds and declares that the establishment of a self-insurers' insolvency trust is necessary to assure that benefit payments to injured workers of self-insured employers will not become the responsibility of the state fund." [1986 c 57 § 5.]

51.14.080 Withdrawal of certification—Grounds. Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

(1) The employer no longer meets the requirements of a self-insurer; or

(2) The self-insurer's deposit is insufficient; or

(3) The self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation; or

(4) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or

(5) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions; or

(6) The self-insurer fails to pay an insolvency assessment under the procedures established pursuant to RCW 51.14.077. [1986 c 57 § 7; 1971 ex.s. c 289 § 32.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.090 Withdrawal of certification, corrective action upon employees' petition. (1) Upon the petition of any employee or union or association having a substantial number of employees in the employ of the self-insurer the director or the director's designee may, in the director or designee's sole discretion, hold a hearing to determine whether or not there are grounds for the withdrawal of certification of a self-insurer or for corrective action by the department.

(2) The director shall serve upon the self-insurer and upon any employee or union or association having a substantial number of employees in the employ of said self-insurer, personally or by certified mail, a notice of intention to withdraw, or not to withdraw, certification of the self-insurer, which notice shall describe the nature and location or locations of the plants or operations involved; and the specific nature of the reasons for the decision. Similar notice shall be provided for decisions regarding corrective actions. The corrective action notice shall also include a directive to the self-insurer specifying the program deficiencies to be eliminated.

(3) If the decision is to withdraw certification, it shall include: The period of time within which the ground or grounds therefor existed or arose; and the date, not less than ninety days after the self-insurer's receipt of the notice, when the certification will be withdrawn.

(4) An appeal of any action taken by the director under this section may be taken by the self-insurer, or by any employee or union or association having a substantial number of employees in the employ of the self-insurer. Proceedings on the appeal shall be as prescribed in this title. Appeal by a self-insurer of notice of intention to withdraw certification or to take corrective action shall not act as a stay of the withdrawal or corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) The director may adopt rules to carry out the purposes of this section. [1996 c 58 § 1; 1983 c 21 § 1; 1971 ex.s. c 289 § 33.]

51.14.095 Corrective action—Appeal. (1) The director shall take corrective action against a self-insured employer if the director determines that:

(a) The employer is not following proper industrial insurance claims procedures;

(b) The employer's accident prevention program is inadequate; or

(c) Any condition described in RCW 51.14.080 (1) through (5) exists.

(2) Corrective actions may be taken upon the director's initiative or in response to a petition filed under RCW 51.14.090. Corrective actions which may be taken by the director shall include:

(a) Probationary certification for a period of time determined by the director;

(b) Mandatory training for employers in areas including claims management, safety procedures, and administrative reporting requirements; and

(c) Monitoring of the activities of the employer to determine progress towards compliance.

The director shall adopt rules defining the corrective actions which may be taken in response to a given condition.

Corrective actions shall be limited to those described in (a), (b), and (c) of this subsection.

(3) Upon the termination of the corrective action, the director shall review the employer's program for compliance with state statutes and regulations. A written report regarding the employer's compliance shall be provided to the employer and to any party to a petition filed under RCW 51.14.090. If the director determines that compliance has been attained, no further action shall be taken. If compliance has not been attained, the director may take additional corrective action as defined in this section, or proceed toward decertification as described in RCW 51.14.080.

(4) An employer may appeal any action taken by the director under this section. Proceedings during the appeal shall be as prescribed in this title. An appeal by a self-insurer shall not act as a stay of the corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) This section shall not be construed to limit the responsibilities or authority of the department under RCW 51.14.080 or 51.14.090. [1983 c 21 § 2.]

51.14.100 Notice of compliance to be posted—Penalty. (1) Every employer subject to the provisions of this title shall post and keep posted in a conspicuous place or places in and about his or her place or places of business a reasonable number of typewritten or printed notices of compliance substantially identical to a form prescribed by the director, stating that such employer is subject to the provisions of this title. Such notice shall advise whether the employer is self-insured or has insured with the department, and shall designate a person or persons on the premises to whom report of injury shall be made.

(2) Any employer who has failed to open an account with the department or qualify as a self-insurer shall not post or permit to be posted on or about his or her place of business or premises any notice of compliance with this title and any wilful violation of this subsection by any officer or supervisory employee of an employer shall be a misdemeanor. [2010 c 8 § 14005; 1971 ex.s. c 289 § 34.]

(2016 Ed.)

51.14.110 Employer's duty to maintain records, furnish information—Electronic reporting system—Requirement and penalties—Confidentiality of claims data—Rules. (1) Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information the self-insurer has in its possession as to any disputed claim, upon forms approved by the director.

(2)(a) The department shall establish an electronic reporting system for the submission to the department of specified self-insurance claims data to more effectively monitor the performance of self-insurers and to obtain claims information in an efficient manner.

(b) Self-insurers shall submit claims data electronically in the format and frequency prescribed by the department.

(c) Electronic submittal to the department of specified claims data is required to maintain self-insurance certification. The department shall establish an escalating schedule of penalties for noncompliance with this requirement, up to and including withdrawal of self-insurance certification.

(d) Claims data reported to the department electronically by individual self-insurers are confidential in accordance with RCW 51.16.070 and 51.28.070. The department may publish, for statistical purposes, aggregated claims data that contain no personal identifiers.

(3) The department shall adopt rules to administer this section. [2005 c 145 § 2; (2005 c 145 § 1 expired July 1, 2008); 1971 ex.s. c 289 § 35.]

Additional notes found at www.leg.wa.gov

51.14.120 Copy of claim file—Notice of protest or appeal—Medical report. (1) The self-insurer shall provide, when authorized under RCW 51.28.070, a copy of the employee's claim file at no cost within fifteen days of receipt of a request by the employee or the employee's representative, and shall provide the physician performing an examination with all relevant medical records from the worker's claim file, but only to the extent required of the department under RCW 51.36.070. If the self-insured employer determines that release of the claim file to an unrepresented worker in whole or in part, may not be in the worker's best interests, the employer must submit a request for denial with an explanation along with a copy of that portion of the claim file not previously provided within twenty days after the request from the worker. In the case of second or subsequent requests, a reasonable charge for copying may be made. The self-insurer shall provide the entire contents of the claim file unless the request is for only a particular portion of the file. Any new material added to the claim file after the initial request shall be provided under the same terms and conditions as the initial request.

(2) The self-insurer shall transmit notice to the department of any protest or appeal by an employee relating to the administration of an industrial injury or occupational disease claim under this chapter within five working days of receipt. The date that the protest or appeal is received by the self-insurer shall be deemed to be the date the protest is received by the department for the purpose of RCW 51.52.050.

(3) The self-insurer shall submit a medical report with the request for closure of a claim under this chapter. [2001 c 152 § 1; 1993 c 122 § 2.]

51.14.130 Request for claim resolution—Time. The self-insurer shall request allowance or denial of a claim within sixty days from the date that the claim is filed. If the self-insurer fails to act within sixty days, the department shall promptly intervene and adjudicate the claim. [1993 c 122 § 3.]

51.14.140 Violations of disclosure or request for resolution—Order by director. Failure of a self-insurer to comply with RCW 51.14.120 and 51.14.130 shall subject the self-insurer to a penalty under RCW 51.48.080, which shall accrue for the benefit of the employee. The director shall issue an order conforming with RCW 51.52.050 determining whether a violation has occurred within thirty days of a request by an employee. [1993 c 122 § 4.]

51.14.150 School districts, ESDs, public hospital districts, or hospitals as self-insurers—Authorized—Organization—Qualifications. (1) For the purposes of this section, "hospital" means a hospital as defined in *RCW 70.41.020(2) or a psychiatric hospital regulated under chapter 71.12 RCW, but does not include beds utilized by a comprehensive cancer center for cancer research.

(2)(a) Any two or more employers which are school districts or educational service districts, or (b) any two or more employers which are public hospital districts or hospitals, and are owned or operated by a state agency or municipal corporation of this state, or (c) any two or more employers which are hospitals, no one of which is owned or operated by a state agency or municipal corporation of this state, may enter into agreements to form self-insurance groups for the purposes of this chapter.

(3) No more than one group may be formed under subsection (2)(b) of this section and no more than one group may be formed under subsection (2)(c) of this section.

(4) The self-insurance groups shall be organized and operated under rules promulgated by the director under RCW 51.14.160. Such a self-insurance group shall be deemed an employer for the purposes of this chapter, and may qualify as a self-insurer if it meets all the other requirements of this chapter. [1997 c 35 § 1; 1993 c 158 § 1; 1983 c 174 § 2; 1982 c 191 § 7.]

**Reviser's note:* RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4). RCW 70.41.020 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5). RCW 70.41.020 was subsequently amended by 2016 c 226 § 1, changing subsection (5) to subsection (7).

Educational service district as self-insurer—Authority: RCW 28A.310.440.

School district as self-insurer—Authority: RCW 28A.320.070.

Additional notes found at www.leg.wa.gov

51.14.160 School districts, ESDs, or hospitals as self-insurers—Rules—Scope. The director shall promulgate rules to carry out the purposes of RCW 51.14.150:

(1) Governing the formation of self-insurance groups for the purposes of this chapter;

(2) Governing the organization and operation of the groups to assure their compliance with the requirements of this chapter;

(3) Requiring adequate monetary reserves, determined under accepted actuarial practices, to be maintained by each group to assure financial solvency of the group; and

(4) Requiring each group to carry adequate reinsurance. [1983 c 174 § 3; 1982 c 191 § 8.]

Additional notes found at www.leg.wa.gov

OFFICE OF THE OMBUDS

51.14.300 Ombuds office created—Appointment—Open and competitive contracting. The office of the ombuds for workers of industrial insurance self-insured employers is created. The ombuds shall be appointed by the governor and report directly to the director of the department. The office of the ombuds may be openly and competitively contracted by the governor in accordance with chapter 39.26 RCW but shall not be physically housed within the industrial insurance division. [2013 c 23 § 105; 2007 c 281 § 1.]

51.14.310 Ombuds—Term of office—Removal—Vacancies. The person appointed ombuds shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term. [2013 c 23 § 106; 2007 c 281 § 2.]

51.14.320 Ombuds—Training or experience qualifications. Any ombuds appointed under this chapter shall have training or experience, or both, in the following areas:

(1) Washington state industrial insurance including self-insurance programs;

(2) The Washington state legal system;

(3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation. [2013 c 23 § 107; 2007 c 281 § 3.]

51.14.330 Ombuds office—Staffing level. During the first two years after the office of the ombuds is created, the staffing level shall be no more than four persons, including the ombuds and any administrative staff. Thereafter, the staffing levels shall be determined based upon the office of the ombuds's workload and whether any additional locations are needed. [2013 c 23 § 108; 2007 c 281 § 4.]

51.14.340 Ombuds office—Powers and duties. The office of the ombuds shall have the following powers and duties:

(1) To act as an advocate for injured workers of self-insured employers;

(2) To offer and provide information on industrial insurance as appropriate to workers of self-insured employers;

(3) To identify, investigate, and facilitate resolution of industrial insurance complaints from workers of self-insured employers;

(4) To maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and

(5) To refer complaints to the department when appropriate. [2013 c 23 § 109; 2007 c 281 § 5.]

51.14.350 Ombuds office—Referral procedures—Department response to referred complaints. (1) The office of the ombuds shall develop referral procedures for

complaints by workers of self-insured employers. The department shall act as quickly as possible on any complaint referred to them by the office of the ombuds.

(2) The department shall respond to any complaint against a self-insured employer referred to it by the office of the ombuds and shall forward the office of the ombuds a summary of the results of the investigation and action proposed or taken. [2013 c 23 § 110; 2007 c 281 § 6.]

51.14.360 Ombuds liability—Discriminatory, disciplinary, or retaliatory actions—Communications privileged and confidential—Testimony. (1) No ombuds is liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a self-insured employer for any communication made, or information given or disclosed, to assist the ombuds in carrying out its duties and responsibilities, unless the same was done maliciously. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by the ombuds, if reasonably related to the requirements of his or her responsibilities under this chapter and done in good faith, are privileged and confidential, and this shall serve as a defense to any action in libel or slander.

(4) Representatives of the office of the ombuds are exempt from being required to testify as to any privileged or confidential matters except as the court may deem necessary to enforce this chapter. [2013 c 23 § 111; 2007 c 281 § 7.]

51.14.370 Confidentiality of ombuds records and files—Disclosure prohibited—Exception. All records and files of the ombuds relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or injured workers shall remain confidential unless disclosure is authorized by the complainant or injured worker or his or her guardian or legal representative. No disclosures may be made outside the office of the ombuds without the consent of any named witness or complainant unless the disclosure is made without the identity of any of these individuals being disclosed. [2013 c 23 § 112; 2007 c 281 § 8.]

51.14.380 Explaining ombuds program—Posters and brochures. The ombuds shall integrate into existing posters and brochures information explaining the ombuds program. Both the posters and the brochures shall contain the ombuds's toll-free telephone number. Every self-insured employer must place a poster in an area where all workers have access to it. The self-insured employer must provide a brochure to all injured workers at the time the employer is notified of the worker's injury. [2013 c 23 § 113; 2007 c 281 § 9.]

51.14.390 Ombuds office—Funding. (1) To provide start-up funding for the office of the ombuds, the department shall impose a one-time assessment on all self-insurers. The amount of the assessment shall be determined by the depart-

ment and shall not exceed the amount needed to pay the start-up costs.

(2) Ongoing funding for the office of the ombuds shall be obtained as part of an annual administrative assessment of self-insurers under RCW 51.44.150. This assessment shall be proportionately based on the number of claims for each self-insurer during the past year. [2013 c 23 § 114; 2007 c 281 § 10.]

51.14.400 Ombuds—Annual report to governor. (1) The ombuds shall provide the governor with an annual report that includes the following:

(a) A description of the issues addressed during the past year and a very brief description of case scenarios in a form that does not compromise confidentiality;

(b) An accounting of the monitoring activities by the ombuds; and

(c) An identification of the deficiencies in the industrial insurance system related to self-insurers, if any, and recommendations for remedial action in policy or practice.

(2) The first annual report shall be due on or before October 1, 2008. Subsequent reports shall be due on or before October 1st. [2013 c 23 § 115; 2007 c 281 § 12.]

Chapter 51.16 RCW

ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

Sections

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51.16.035 Classifications—Premiums—Rules—Workers' compensation advisory committee recommendations. (1) The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be:

(a) The lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles; and

(b) Designed to attempt to limit fluctuations in premium rates.

(2) The department shall formulate and adopt rules governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to achieve the objectives under this section, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

(3)(a) After the first report is issued by the state auditor under RCW 51.44.115, the workers' compensation advisory committee shall review the report and, as the committee deems appropriate, may make recommendations to the department concerning:

(i) The level or levels of a contingency reserve that are appropriate to maintain actuarial solvency of the accident and medical aid funds, limit premium rate fluctuations, and account for economic conditions; and

(ii) When surplus funds exist in the trust funds, the circumstances under which the department should give premium dividends, or similar measures, or temporarily reduce rates below the rates fixed under subsection (1) of this section, including any recommendations regarding notifications that should be given before taking the action.

(b) Following subsequent reports issued by the state auditor under RCW 51.44.115, the workers' compensation advisory committee may, as it deems appropriate, update its recommendations to the department on the matters covered under (a) of this subsection.

(4) In providing a retrospective rating plan under RCW 51.18.010, the department may consider each individual retrospective rating group as a single employing entity for purposes of dividends or premium discounts. [2005 c 410 § 1; 1999 c 7 § 8; 1989 c 49 § 1; 1980 c 129 § 4; 1977 ex.s. c 350 § 24; 1971 ex.s. c 289 § 16.]

Additional notes found at www.leg.wa.gov

51.16.040 Occupational diseases. The compensation and benefits provided for occupational diseases shall be paid and in the same manner as compensation and benefits for injuries under this title. [1971 ex.s. c 289 § 83; 1961 c 23 § 51.16.040. Prior: 1959 c 308 § 12; 1941 c 235 § 2; Rem. Supp. 1941 7679-1.]

Additional notes found at www.leg.wa.gov

51.16.042 Occupational and environmental research facility. Inasmuch as business, industry and labor desire to provide for testing, research, training and teaching facilities and consulting services at the University of Washington for industrial and occupational health for workers in the environmental research facility thereat, all employers shall bear their proportionate share of the cost therefor. The director may require payments to the department from all employers under this title and may make rules and regulations in connection therewith, which costs shall be paid from the department, in lieu of the previous provisions of RCW 28B.20.458. [1977 ex.s. c 350 § 25; 1971 ex.s. c 289 § 84; 1963 c 151 § 2.]

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Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.

Additional notes found at www.leg.wa.gov

51.16.060 Quarterly report of payrolls. Every employer not qualifying as a self-insurer, shall insure with the state and shall, on or before the last day of January, April, July and October of each year thereafter, furnish the department with a true and accurate payroll for the period in which workers were employed by it during the preceding calendar quarter, the total amount paid to such workers during such preceding calendar quarter, and a segregation of employment in the different classes established pursuant to this title, and shall pay its premium thereon to the appropriate fund. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter. The sufficiency of such statement shall be subject to the approval of the director: PROVIDED, That the director may in his or her discretion and for the effective administration of this title require an employer in individual instances to furnish a supplementary report containing the name of each individual worker, his or her hours worked, his or her rate of pay and the class or classes in which such work was performed: PROVIDED FURTHER, That in the event an employer shall furnish the department with four consecutive quarterly reports wherein each such quarterly report indicates that no premium is due the department may close the account: PROVIDED FURTHER, That the department may promulgate rules and regulations in accordance with chapter 34.05 RCW to establish other reporting periods and payment due dates in lieu of reports and payments following each calendar quarter, and may also establish terms and conditions for payment of premiums and assessments based on estimated payrolls, with such payments being subject to approval as to sufficiency of the estimated payroll by the department, and also subject to appropriate periodic adjustments made by the department based on actual payroll: AND PROVIDED FURTHER, That a temporary help company which provides workers on a temporary basis to its customers shall be considered the employer for purposes of reporting and paying premiums and assessments under this title according to the appropriate rate classifications as determined by the department: PROVIDED, That the employer shall be liable for paying premiums and assessments, should the temporary help company fail to pay the premiums and assessments under this title. [1985 c 315 § 1; 1981 c 260 § 13. Prior: 1977 ex.s. c 350 § 26; 1977 ex.s. c 323 § 11; 1973 1st ex.s. c 32 § 1; 1971 ex.s. c 289 § 76; 1965 ex.s. c 80 § 1; 1961 c 23 § 51.16.060; prior: 1959 c 308 § 14; 1957 c 70 § 47; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Additional notes found at www.leg.wa.gov

51.16.070 Employer's records—Unified business identifier—Confidentiality. (1)(a) Every employer shall keep at his or her place of business a record of his or her employment from which the information needed by the department may be obtained and such record shall at all times be open to the inspection of the director, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in RCW 51.48.040.

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(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and the compensation paid to the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty under RCW 51.48.030.

(2) Information obtained from employing unit records under the provisions of this title shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but any interested party shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: PROVIDED, That any employing unit may authorize inspection of its records by written consent. [2008 c 120 § 5; 1997 c 54 § 3; 1961 c 23 § 51.16.070. Prior: 1957 c 70 § 48; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

51.16.090 Continuity of cost experience. To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, the director may determine whether or not an increase, decrease, or change (1) of operating property; (2) of interest in operating property; (3) of employer; (4) of personnel or interest in employer is sufficient to show a bona fide change which would make inoperative any high cost experience: PROVIDED, That where an employer is now or has prior to January 1, 1958, been covered under the provisions of this title for a period of at least two years and subsequent thereto the legal structure of the employer changes by way of incorporation, disincorporation, merger, consolidation, transfer of stock ownership, or by any other means, such person or entity as legally reconstituted shall be entitled to a continuation of the experience rating which existed prior to such change in the employer's legal structure unless there has been such a substantial change as provided in subdivisions (1), (2), (3) or (4) of this section as would warrant making inoperative any high cost experience. [1961 c 23 § 51.16.090. Prior: 1959 c 179 § 1; 1957 c 70 § 49; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

51.16.100 Classification changes. It is the intent that the accident fund shall ultimately become neither more nor less than self-supporting, except as provided in RCW 51.16.105 and, if in the adjustment of premium rates by the director the moneys paid into the fund by any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange, or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper. The director shall make corrections of classifications or subclassifications or changes in rates, classes and subclasses when the best interest of such classes or subclasses will be served thereby. [1961 c 23 § 51.16.100. Prior: 1953 c 218 § 1; prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

(2016 Ed.)

51.16.105 Departmental expenses, financing, accounting. (1) All department expenses relating to industrial safety and health services of the department pertaining to workers' compensation shall be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title.

(2) The department shall include in all rate notices sent to state fund and self-insured employers an accounting that clearly identifies all programs and services that are financed in whole or in part by state fund premiums or self-insurers' administrative assessments. [2011 c 175 § 1; 1994 c 164 § 26; 1977 ex.s. c 350 § 27; 1973 1st ex.s. c 52 § 8; 1971 ex.s. c 289 § 86; 1961 c 23 § 51.16.105. Prior: 1953 c 218 § 2.]

Additional notes found at www.leg.wa.gov

51.16.107 Information and training on premium liability. The department shall, working with business associations and other employer and employee groups when practical, publish information and provide training to promote understanding of the premium liability that may be incurred under this chapter. [2004 c 243 § 4.]

Additional notes found at www.leg.wa.gov

51.16.110 New businesses or resumed or continued operations. Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his or her payroll in connection therewith, or who was formerly a self-insurer and wishes to continue his or her operations subject to this title, shall, before so commencing or resuming or continuing operations, as the case may be, notify the department of such fact. [1991 c 88 § 4; 1977 ex.s. c 323 § 12; 1971 ex.s. c 289 § 4; 1961 c 23 § 51.16.110. Prior: 1959 c 179 § 2; 1959 c 308 § 15; prior: 1957 c 70 § 50; 1951 c 236 § 4; 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Additional notes found at www.leg.wa.gov

51.16.120 Distribution of further accident cost. (1) Whenever a worker has a previous bodily disability from any previous injury or disease, whether known or unknown to the employer, and suffers a further disability from injury or occupational disease in employment covered by this title and becomes totally and permanently disabled from the combined effects thereof or dies when death was substantially accelerated by the combined effects thereof, then the experience record of an employer insured with the state fund at the time of the further injury or disease must be charged and a self-insured employer must pay directly into the reserve fund only the accident cost which would have resulted solely from the further injury or disease, had there been no preexisting disability, and which accident cost must be based upon an evaluation of the disability by medical experts. The difference between the charge thus assessed to such employer at the time of the further injury or disease and the total cost of the pension reserve must be assessed against the second injury fund. Except as provided in subsection (2) of this section, the department must pass upon the application of this section in all cases where benefits are paid for total permanent disability or death and issue an order thereon appealable by the employer. Pending outcome of such appeal the transfer or payment must be made as required by such order.

(2) If a self-insured employer is in default or the director has withdrawn the certification of a self-insured employer, the department may not pass on the application of this section. In such cases, the total cost of the pension reserve must first be assessed against the defaulting self-insured employer's deposit required by RCW 51.14.020 and in cases where the surety funds are insufficient the remaining cost of the pension reserve must be assessed against the insolvency trust fund.

(3) The department must, in cases of claims of workers sustaining injuries or occupational diseases in the employ of state fund employers, recompute the experience record of such employers when the claims of workers injured in their employ have been found to qualify for payments from the second injury fund after the regular time for computation of such experience records and the department may make appropriate adjustments in such cases including cash refunds or credits to such employers.

(4) To encourage employment of injured workers who have a developmental disability as defined in RCW 71A.10.020, the department may adopt rules providing for the reduction or elimination of premiums or assessments from employers of such workers and may also adopt rules for the reduction or elimination of charges against their employers in the event of further injury to such workers in their employ. [2015 c 137 § 1; 2010 c 213 § 1; 2004 c 258 § 1; 1984 c 63 § 1; 1980 c 14 § 7. Prior: 1977 ex.s. c 350 § 28; 1977 ex.s. c 323 § 13; 1972 ex.s. c 43 § 13; 1961 c 23 § 51.16.120; prior: 1959 c 308 § 16; 1945 c 219 § 1; 1943 c 16 § 1; Rem. Supp. 1945 § 7676-1a.]

Application—2015 c 137 §§ 1, 2, and 6: "Sections 1, 2, and 6 of this act apply to all workers' compensation claims that are open on or after January 1, 2016, without regard to the date of injury or occupational disease manifestation." [2015 c 137 § 9.]

Rules—2015 c 137: See note following RCW 51.32.096.

Additional notes found at www.leg.wa.gov

51.16.130 Distribution of catastrophe cost. Whenever there shall occur an accident in which three or more employees of an employer insured with the state fund are fatally injured or sustain permanent total disability, the amount of total cost other than medical aid costs arising out of such accident that shall be charged to the account of the employer, shall be twice the average cost of the pension claims arising out of such accident. The entire cost of such accident, exclusive of medical aid costs, shall be charged against and defrayed by the catastrophe injury account. [1972 ex.s. c 43 § 14; 1961 c 23 § 51.16.130. Prior: 1957 c 70 § 22; prior: 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.16.140 Premium liability of worker. (1) Every employer who is not a self-insurer shall deduct from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: PROVIDED, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid

fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. The deduction under this section is not authorized for premiums assessed under RCW 51.16.210.

(2) It shall be unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction shall be a gross misdemeanor. [1989 c 385 § 3; 1977 ex.s. c 350 § 29; 1973 c 110 § 2; 1971 ex.s. c 289 § 77; 1971 c 20 § 2; 1961 c 23 § 51.16.140. Prior: (i) 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 28 § 4, part; RRS § 7713, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

Additional notes found at www.leg.wa.gov

51.16.150 Delinquent employers—Penalty after demand—Injunctive relief. If any employer shall default in any payment to any fund, the sum due may be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default occurs after demand, the director may require from the defaulting employer a bond to the state for the benefit of any fund, with surety to the director's satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state shall be entitled to an injunction restraining the delinquent from prosecuting an occupation or work until such bond is furnished, and until all delinquent premiums, penalties, interest, and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during such periods, and any sale, transfer, or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his or her works, plant, or lease thereto, shall be invalid until all past delinquencies are made good, and such bond furnished. [2010 c 8 § 14006; 1986 c 9 § 4; 1985 c 315 § 2; 1972 ex.s. c 43 § 15; 1961 c 23 § 51.16.150. Prior: 1959 c 308 § 22; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.155 Failure or refusal of employer to report or pay premiums due—Collection. In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll and the premiums due thereon and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand by the department, which shall include the amount of premiums estimated by the department, the employer shall be in default as provided by this title and the department may have and recover judgment, warrant, or file liens for such estimated premium or the actual premium, whichever is greater.

The director or the director's designee may compromise the amount of premiums estimated by the department, whether reduced to judgment or otherwise, arising under this

title if collection of the premiums estimated by the department would be against equity and good conscience. [1996 c 60 § 1; 1985 c 315 § 3; 1971 ex.s. c 289 § 87.]

Additional notes found at www.leg.wa.gov

51.16.160 Lien for payments due—Priority—Probate, insolvency, etc. In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the payments due shall be a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and all administrators, receivers, or assignees for the benefit of creditors shall notify the department of such administration, receivership, or assignment within thirty days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and the amount of such payroll for the period stated in the certificate shall be prima facie evidence of such fact. [1985 c 315 § 4; 1971 ex.s. c 289 § 78; 1961 c 23 § 51.16.160. Prior: 1959 c 308 § 23; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

Additional notes found at www.leg.wa.gov

51.16.170 Lien for premiums, assessments, contributions, and penalties—Priority—In general—Notice. Separate and apart from and in addition to the foregoing provisions in this chapter, the claims of the state for payments and penalties due under this title shall be a lien prior to all other liens or claims and on a parity with prior tax liens not only against the interest of any employer, in real estate, plant, works, equipment, and buildings improved, operated, or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this section shall attach from the date of the commencement of the labor upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the department shall, within four months after the employer has made report of his or her payroll and has defaulted in the payment of his or her premiums thereupon, file with the county auditor of the county within which such property is then situated, a statement in writing describing in general terms the property upon which a lien is claimed and stating the amount of the lien claimed by the department. If any employer fails or refuses to make report of his or her payroll, the lien hereby created shall continue in full force and effect, although the amount thereof is undetermined and the four months' time within which the department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property, and in such suit the certificate of the department stating the date of the actual receipt by the department of such payroll report shall be prima facie evidence of such fact. [2010 c 8 § 14007; 1986 c 9 § 5; 1961 c 23 §

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51.16.170. Prior: 1959 c 308 § 24; prior: 1951 c 214 § 1; 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.180 Property acquired by state on execution. The director shall have the custody of all property acquired by the state at execution sale upon judgments obtained for delinquent payments and penalties therefor and costs, and may sell and dispose of the same at private sales for the sale purchase price, and shall pay the proceeds into the state treasury to the credit of the appropriate fund. In case of the sale of real estate the director shall execute the deed in the name of the state. [1971 ex.s. c 289 § 79; 1961 c 23 § 51.16.180. Prior: 1921 c 7 § 78, subdivision (4); RRS § 10836(4).]

Additional notes found at www.leg.wa.gov

51.16.190 Limitation on collection actions. (1) "Action" means, but is not limited to, a notice of assessment pursuant to RCW 51.48.120, an action at law pursuant to RCW 51.16.150, or any other administrative or civil process authorized by this title for the determination of liability for premiums, assessments, penalties, contributions, or other sums, or the collection of premiums, assessments, penalties, contributions, or other sums.

(2) Any action to collect any delinquent premium, assessment, contribution, penalty, or other sum due to the department from any employer subject to this title shall be brought within three years of the date any such sum became due.

(3) In case of a false or fraudulent report with intent to evade premiums, assessments, contributions, penalties, interest, or other sums, or in the event of a failure to file a report, action may be begun at any time.

(4) Any claim for refund or adjustment by an employer of any premium, assessment, contribution, penalty, or other sum collected by the department shall be made in writing to the department within three years of the date the sum became due. [1987 c 111 § 7; 1985 c 315 § 5; 1977 ex.s. c 323 § 27.]

Additional notes found at www.leg.wa.gov

51.16.200 Payment of tax by employer quitting business—Liability of successor. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any tax payable hereunder shall become immediately due and payable, and the employer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the employer until such time as the employer shall produce a receipt from the department showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1995 c 160 § 1; 1986 c 9 § 6.]

51.16.210 Horse racing employment—Premiums.

(1) The department shall assess premiums, under the provisions of this section, for certain horse racing employments licensed in accordance with chapter 67.16 RCW. This premium assessment shall be for the purpose of providing industrial insurance coverage for employees of trainers licensed under chapter 67.16 RCW, including but not limited to exercise riders, pony riders, and grooms, and including all on or off track employment. The department may adopt rules under chapter 34.05 RCW to carry out the purposes of this section, including rules providing for alternative reporting periods and payment due dates for coverage under this section. The department rules shall ensure that no licensee licensed prior to May 13, 1989, shall pay more than the assessment fixed at the basic manual rate.

(2) The department shall compute industrial insurance premium rates and these premiums may be assessed at the time of each issuance or renewal of the license for owners, trainers, and grooms in amounts established by department rule for coverage under this section. Premium assessments shall be determined in accordance with the requirements of this title, except that assessments shall not be experience rated and shall be fixed at the basic manual rate. However, rates may vary according to the risk insured, as determined according to rules adopted by the department and the Washington horse racing commission.

(3) For the purposes of paying premiums and assessments under this section and making reports under this title, individuals licensed as trainers by the Washington horse racing commission shall be considered employers. The premium assessment for a groom shall be paid by the trainer responsible for hiring the groom and is payable as required by the Washington horse racing commission.

(4) The fee to be assessed on owner licenses as required by this section shall not exceed one hundred fifty dollars. However, those owners having less than a full ownership in a horse or horses shall pay a percentage of the required license fee that is equal to the total percentage of the ownership that the owner has in the horse or horses. In no event shall an owner having an ownership percentage in more than one horse pay more than a one hundred fifty-dollar license fee. The assessment on each owner's license shall not imply that an owner is an employer, but shall be required as part of the privilege of holding an owner's license.

(5) Premium assessments under this section shall be collected by the Washington horse racing commission and deposited in the industrial insurance trust funds as provided under department rules. [2013 c 80 § 1; 1989 c 385 § 1.]

51.16.220 Reimbursement from disaster response account for nongovernment employees. (1) When a worker of a nongovernment employer is injured or develops

an occupational disease due to an exposure while assisting in the life and rescue phase of an emergency, in response to a request for assistance from a state or local government entity, including fire service or law enforcement, the cost of benefits shall be reimbursed from the disaster response account, RCW 38.52.105, to the appropriate workers' compensation fund, or to the self-insured employer, as the case may be. The cost of such injuries or occupational diseases shall not be charged to the experience record of a state fund employer.

(2) For the purposes of this section, "life and rescue phase" means the first seventy-two hours after the occurrence of a natural or man-made disaster in which a state or municipal entity, including fire service or law enforcement, acknowledges or declares such a disaster and requests assistance from the private sector in locating and rescuing survivors. The initial life and rescue phase may be extended for a finite period of time by declaration of the state or municipal entity requesting assistance. [2005 c 422 § 1.]

Additional notes found at www.leg.wa.gov

51.16.230 Hospitals—Premiums—Rules—Reports.

(1) By January 1, 2007, the department shall develop rules to provide a reduced workers' compensation premium for hospitals that implement a safe patient handling program. The rules shall include any requirements for obtaining the reduced premium that must be met by hospitals.

(2) The department shall complete an evaluation of the results of the reduced premium, including changes in claim frequency and costs, and shall report to the appropriate committees of the legislature by December 1, 2010, and 2012. [2006 c 165 § 4.]

Findings—2006 c 165: See note following RCW 70.41.390.

51.16.242 Farm internship program—Special risk class. (Expires December 31, 2017.) The department shall adopt rules to provide special workers' compensation risk class or classes for farm interns providing agricultural labor pursuant to a farm internship program under RCW 49.12.470. The rules must include any requirements for obtaining a special risk class that must be met by small farms. [2014 c 131 § 3.]

Expiration date—2014 c 131: See note following RCW 49.12.470.

Chapter 51.18 RCW RETROSPECTIVE RATING PLAN

Sections

51.18.005	Findings.
51.18.010	Availability—Rules—Coverage period.
51.18.020	Entrance criteria.
51.18.030	Sponsoring entities—New or existing retrospective rating groups.
51.18.040	Retrospective rating groups—Industry and business categories.
51.18.050	Retrospective rating groups—Probationary status—Denial of future enrollment.
51.18.060	Retrospective rating groups—Department approval.
51.18.065	Direct primary care services—Payment by employer—Rules.

51.18.005 Findings. The legislature finds that the retrospective rating plan provided for in RCW 51.16.035 has proven to be highly effective both in terms of improved workplace safety and injured worker outcomes. As a result,

the number of industrial insurance claims of many employers participating in the retrospective rating plan have been reduced through sound risk management strategies and enhanced cooperation with department claims management activities.

The legislature further finds that entrance criteria for the retrospective rating plan under RCW 51.16.035 should be clear and understandable to both the department and potential retrospective rating plan participants.

The legislature therefore declares that a new retrospective rating plan is needed in order to protect and preserve the integrity and welfare of the retrospective rating system. [1999 c 7 § 1.]

51.18.010 Availability—Rules—Coverage period.

(1) The department shall offer a retrospective rating plan to insure the workers' compensation obligations of employers and groups of employers. The plan is to be made available to any employer or group of employers who:

(a) Voluntarily elects to participate in the plan; and

(b) Meets the requirements of this chapter and rules adopted by the department under subsection (2) of this section.

(2) The retrospective rating plan shall be consistent with recognized insurance principles and shall be administered according to rules adopted by the department. Rules adopted under this section shall encourage broad participation by qualified employers and sponsors of retrospective rating groups.

(3) Each retrospective rating group approved by the department under this chapter shall select a coverage period and may be renewed at the end of each coverage period. For the purposes of this section, "coverage period" means a twelve-month period provided by the department by rule. [1999 c 7 § 2.]

51.18.020 Entrance criteria. Prior to allowing initial entrance into the state's retrospective rating plan, the department shall review each proposed retrospective rating group to ensure that the following criteria are met:

(1) The entity sponsoring the retrospective rating group must have been in existence for at least four years;

(2) The entity sponsoring the retrospective rating group must exist primarily for a purpose other than that of obtaining or offering insurance coverage or insurance related services;

(3) The entity sponsoring the retrospective rating group must have a written workplace safety and accident prevention plan in place for the proposed retrospective rating group and must propose methods by which the retrospective rating group will cooperate with department claims management activities;

(4) All employers in the retrospective rating group must be members of the sponsoring entity;

(5) All employers in the retrospective rating group must have an industrial insurance account in good standing with the department;

(6) Fifty percent of the original employers in the retrospective rating group must have been members of the sponsoring entity for one year prior to the group's entrance into the retrospective rating plan;

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(7) The retrospective rating group must be composed of employers who are substantially similar considering the services or activities performed by the employees of those employers;

(8) The initial premium level for the retrospective rating group must be at least one million five hundred thousand dollars and shall be based on the standard premium of the proposed group members' most current previous coverage period; and

(9) The formation and operation of the retrospective rating group must seek to substantially improve workplace safety and accident prevention for the employers in the group. [1999 c 7 § 3.]

51.18.030 Sponsoring entities—New or existing retrospective rating groups.

(1) Entities which sponsored retrospective rating groups prior to July 25, 1999, may not sponsor additional retrospective rating groups in a new business or industry category until the coverage period beginning January 1, 2003.

(2) For retrospective rating groups approved by the department on or after July 25, 1999, the sponsoring entity may not propose another retrospective rating group in a new business or industry category until the minimum mandatory adjustment periods required by the department for the first two coverage periods of the last formed retrospective rating group are completed.

(3) Subsections (1) and (2) of this section do not prohibit a sponsoring entity from proposing to:

(a) Divide an existing retrospective rating group into two or more groups provided that the proposed new groups fall within the same business or industry category as the group that is proposed to be divided; or

(b) Merge existing retrospective rating groups into one business or industry category provided that the proposed merged groups fall within the same business or industry category as the groups that are proposed to be merged.

(4) Under no circumstances may a sponsoring entity propose retrospective rating groups in multiple business or industry categories in the same application to the department.

(5) An insurer, insurance broker, agent, or solicitor may not:

(a) Participate in the formation of a retrospective rating group; or

(b) Sponsor a retrospective rating group. [1999 c 7 § 4.]

51.18.040 Retrospective rating groups—Industry and business categories.

(1) In order to ensure that all retrospective rating groups are made up of employers who are substantially similar, considering the services or activities performed by the employees of those employers, the sponsoring entity of a retrospective rating group shall select a single, broad industry or business category for each retrospective rating group. Once an industry or business category is selected, the department shall allow all risk classifications reasonably related to that business or industry category into that retrospective rating group.

(2) The following broad industry and business categories shall be used by the sponsoring entity and the department in establishing retrospective rating groups:

(a) Agriculture and related services;

(b) Automotive, truck and boat manufacturing, sales, repair, and related services;

(c) Construction and related services;

(d) Distillation, chemical production, food, and related services;

(e) Facilities or property management, maintenance, and related services;

(f) Government, utilities, schools, health care, and related services;

(g) Health care, pharmaceutical, laboratories, and related services;

(h) Logging, wood products manufacturing, and related services;

(i) Manufacturing, processing, mining, quarrying, and related services;

(j) Retail stores, wholesale stores, professional services, and related services;

(k) Temporary help and related services; and

(l) Transportation, recycling, warehousing, facility maintenance, and related services.

(3) The industry and business categories in subsection (2) of this section are not exclusive. In response to significant changes in marketplace demographics or the discovery of unique business or industry categories, the department may, by rule, include additional broad industry or business category selections. The department may, by rule, remove an industry covered within an industry or business category in the event that the business or industry is no longer found within this state.

(4) Given the broad nature of the industry and business categories in subsection (2) of this section, the risk classification or classifications assigned to an individual employer may appropriately fall into multiple business or industry categories.

(5) In order to simplify administration and keep the administrative costs associated with devising a different classification system for a retrospective rating plan to a minimum, the state's retrospective rating plan shall follow the same classification procedure established by the department to assign workers' compensation insurance classifications to an employer.

(6) Employers who have been a member of an existing, approved retrospective rating group prior to July 25, 1999, may continue in that group even if they are not substantially similar to the industry or business category selected pursuant to subsection (1) of this section. However, new employers proposed for addition to a retrospective rating group on or after July 25, 1999, must fall within the selected industry or business category. [1999 c 7 § 5.]

51.18.050 Retrospective rating groups—Probationary status—Denial of future enrollment. (1) Any retrospective rating group required to pay additional net premium assessments in two consecutive coverage periods shall be immediately placed on probationary status. Once a group is placed on probationary status, the department shall review the group's workplace safety and accident prevention plan and its methods for cooperation with department claims management activities. Following the review, the department shall make recommendations for corrective steps that may be taken to improve the group's performance.

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(2) If the same retrospective rating group is required to pay an additional net premium assessment in the third consecutive coverage period, that group shall be denied future enrollment in the state's retrospective rating plan. In addition, the sponsoring entity of the failed group may not sponsor another group in the same business or industry category for five coverage periods from the ending date of the failed group's last coverage period.

(3) This section applies prospectively only and not retroactively. It applies only to net assessments received by a retrospective rating group for plan years beginning after July 25, 1999. [1999 c 7 § 6.]

51.18.060 Retrospective rating groups—Department approval. All retrospective rating groups approved by the department prior to July 25, 1999, under RCW 51.16.035 as it existed prior to July 25, 1999, remain approved and, with the exception of RCW 51.18.020, are subject to the provisions of this chapter. [1999 c 7 § 7.]

51.18.065 Direct primary care services—Payment by employer—Rules. Payment by an employer for direct primary care services as defined in RCW 48.150.010 when used for medical services on an allowed industrial injury or occupational disease claim does not disqualify: (1) The employer from participating in a retrospective rating plan; (2) any related group sponsor from promoting a retrospective rating plan; or (3) any related plan administrator from administering a retrospective rating plan, provided the employer or group sponsor or plan administrator provides any medical cost or payment information that may be required by the department. Prior to the first retrospective rating adjustment for the plan year beginning January 1, 2012, the department shall determine the information needed and any changes to the retrospective rating premium and claim cost calculations to maintain appropriate and equitable retrospective rating refunds when employers pay for direct primary care services. These changes shall apply beginning with the January 1, 2012, plan year.

The department may adopt rules to implement this section. [2011 c 290 § 3.]

Chapter 51.24 RCW

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

51.24.020	Action against employer for intentional injury.
51.24.030	Action against third person—Election by injured person or beneficiary—Underinsured motorist insurance coverage.
51.24.035	Immunity of design professional and employees.
51.24.040	Election or recovery no bar to compensation or benefits.
51.24.050	Assignment of cause of action—Disposition of recovered amount.
51.24.060	Distribution of amount recovered—Lien.
51.24.070	Required election—Procedures—Right of reelection.
51.24.080	Notice of election or copy of complaint to department or self-insurer—Filing notice.
51.24.090	Compromise or settlement less than benefits.
51.24.100	Right to compensation not pleadable or admissible—Challenge to right to bring action.
51.24.110	Assigned cases—Special assistant attorneys general.
51.24.120	Rules.
51.24.900	Application—1977 ex.s. c 85.
51.24.902	Application—1984 c 218.

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51.24.020 Action against employer for intentional injury. If injury results to a worker from the deliberate intention of his or her employer to produce such injury, the worker or beneficiary of the worker shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any damages in excess of compensation and benefits paid or payable under this title. [1984 c 218 § 2; 1977 ex.s. c 350 § 31; 1973 1st ex.s. c 154 § 94; 1961 c 23 § 51.24.020. Prior: 1957 c 70 § 24; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

Additional notes found at www.leg.wa.gov

51.24.030 Action against third person—Election by injured person or beneficiary—Underinsured motorist insurance coverage. (1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

(5) For the purposes of this chapter, "recovery" includes all damages except loss of consortium. [1995 c 199 § 2; 1987 c 212 § 1701; 1986 c 58 § 1; 1984 c 218 § 3; 1977 ex.s. c 85 § 1.]

Additional notes found at www.leg.wa.gov

51.24.035 Immunity of design professional and employees. (1) Notwithstanding RCW 51.24.030(1), the injured worker or beneficiary may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.

(2) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.

(3) For the purposes of this section, "design professional" means an architect, professional engineer, land sur-

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veyor, or landscape architect, who is licensed or authorized by law to practice such profession, or any corporation organized under chapter 18.100 RCW or authorized under RCW 18.08.420 or 18.43.130 to render design services through the practice of one or more of such professions. [1987 c 212 § 1801.]

51.24.040 Election or recovery no bar to compensation or benefits. The injured worker or beneficiary shall be entitled to the full compensation and benefits provided by this title regardless of any election or recovery made under this chapter. [1977 ex.s. c 85 § 2.]

51.24.050 Assignment of cause of action—Disposition of recovered amount. (1) An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

(2) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(3) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(4) Any recovery made by the department or self-insurer shall be distributed as follows:

(a) The department or self-insurer shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (5) of this section: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer; and

(d) The injured worker or beneficiary shall be paid any remaining balance.

(5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(6) When the cause of action has been assigned to the self-insurer and compensation and benefits have been paid and/or are payable from state funds for the same injury:

(a) The prosecution of such cause of action shall also be for the benefit of the department to the extent of compensation and benefits paid and payable from state funds;

(b) Any compromise or settlement of such cause of action which results in less than the entitlement under this title is void unless made with the written approval of the department;

(c) The department shall be reimbursed for compensation and benefits paid from state funds;

(d) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the self-insurer in obtaining the award or settlement; and

(e) Any remaining balance under subsection (4)(d) of this section shall be applied, under subsection (5) of this section, to reduce the obligations of the department and self-insurer to pay further compensation and benefits in proportion to which the obligations of each bear to the remaining entitlement of the worker or beneficiary. [1995 c 199 § 3; 1984 c 218 § 4; 1983 c 211 § 1; 1977 ex.s. c 85 § 3.]

Additional notes found at www.leg.wa.gov

51.24.060 Distribution of amount recovered—Lien.

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards

to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by a method for which receipt can be confirmed or tracked, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to

a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by a method for which receipt can be confirmed or tracked; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [2011 c 290 § 4; 2001 c 146 § 9; 1995 c 199 § 4; 1993 c 496 § 2; 1987 c 442 § 1118; 1986 c 305 § 403; 1984 c 218 § 5; 1983 c 211 § 2; 1977 ex.s. c 85 § 4.]

Additional notes found at www.leg.wa.gov

51.24.070 Required election—Procedures—Right of reelection. (1) The department or self-insurer may require the injured worker or beneficiary to exercise the right of election under this chapter by serving a written demand by registered mail, certified mail, or personal service on the worker or beneficiary.

(2) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department or self-insurer, the injured worker or beneficiary is deemed to have assigned the action to the department or self-insurer. The department or self-insurer shall allow the worker or beneficiary at least ninety days from the election to institute or settle the action. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

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(3) If an action which has been filed is not diligently prosecuted, the department or self-insurer may petition the court in which the action is pending for an order assigning the cause of action to the department or self-insurer. Upon a sufficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

(4) If the department or self-insurer has taken an assignment of the third party cause of action under subsection (2) of this section, the injured worker or beneficiary may, at the discretion of the department or self-insurer, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department or self-insurer. [1984 c 218 § 6; 1977 ex.s. c 85 § 5.]

51.24.080 Notice of election or copy of complaint to department or self-insurer—Filing notice. (1) If the injured worker or beneficiary elects to seek damages from the third person, notice of the election must be given to the department or self-insurer. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the injured worker or beneficiary, a copy of the complaint must be sent by registered mail to the department or self-insurer.

(2) A return showing service of the notice on the department or self-insurer shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by RCW 51.24.060(2). [1977 ex.s. c 85 § 6.]

51.24.090 Compromise or settlement less than benefits. (1) Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer: PROVIDED, That for the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-insurer may proceed as provided in chapter 7.24 RCW. [1995 c 199 § 5; 1984 c 218 § 7; 1977 ex.s. c 85 § 7.]

Additional notes found at www.leg.wa.gov

51.24.100 Right to compensation not pleadable or admissible—Challenge to right to bring action. The fact that the injured worker or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law. [1977 ex.s. c 85 § 8.]

51.24.110 Assigned cases—Special assistant attorneys general. (1) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with chapter 51.24 RCW, may be prosecuted by special assistant attorneys general.

(2) The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall promulgate rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate third party actions under subsection (1) of this section. [1984 c 218 § 1.]

51.24.120 Rules. The department may adopt, amend, and rescind under chapter 34.05 RCW such rules as may be necessary to the administration of this chapter. [1984 c 218 § 8.]

51.24.900 Application—1977 ex.s. c 85. This 1977 amendatory act shall apply only to causes of action which arise on or after its effective date. [1977 ex.s. c 85 § 9.]

51.24.902 Application—1984 c 218. This act applies to all causes of action against third persons in which judgment or settlement of the underlying action has not taken place before June 7, 1984. [1984 c 218 § 9.]

Chapter 51.28 RCW

NOTICE AND REPORT OF ACCIDENT— APPLICATION FOR COMPENSATION

Sections

51.28.010	Notice of accident—Notification of worker's rights—Claim suppression.
51.28.015	Injury reporting—Findings—Department educational initiative—Pilot program, employers to assist workers in applying for benefits—Report.
51.28.020	Worker's application for compensation—Physician to aid in.
51.28.025	Duty of employer to report injury or disease—Contents of report—Claim suppression—Penalty.
51.28.030	Beneficiaries' application for compensation—Notification of rights.
51.28.040	Application for change in compensation.
51.28.050	Time limitation for filing application or enforcing claim for injury.
51.28.055	Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules.
51.28.060	Proof of dependency.
51.28.070	Claim files and records confidential.
51.28.080	Determination of compensation for temporary total disability—Notification of employer.
51.28.090	Notification of availability of basic health plan.
51.28.100	Physician assistant signatures—Documents required by the department.

51.28.010 Notice of accident—Notification of worker's rights—Claim suppression. (1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025 where the worker has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her

beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to receive health services from a physician or a licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and must list the types of providers authorized to provide these services.

(3) Employers shall not engage in claim suppression.

(4) For the purposes of this section, "claim suppression" means intentionally:

(a) Inducing employees to fail to report injuries;

(b) Inducing employees to treat injuries in the course of employment as off-the-job injuries; or

(c) Acting otherwise to suppress legitimate industrial insurance claims.

(5) In determining whether an employer has engaged in claim suppression, the department shall consider the employer's history of compliance with industrial insurance reporting requirements, and whether the employer has discouraged employees from reporting injuries or filing claims. The department has the burden of proving claim suppression by a preponderance of the evidence.

(6) Claim suppression does not include bona fide workplace safety and accident prevention programs or an employer's provision at the worksite of first aid as defined by the department. The department shall adopt rules defining bona fide workplace safety and accident prevention programs and defining first aid. [2007 c 77 § 1; 2004 c 65 § 3; 2001 c 231 § 1; 1977 ex.s. c 350 § 32; 1975 1st ex.s. c 224 § 4; 1971 ex.s. c 289 § 5; 1961 c 23 § 51.28.010. Prior: 1915 c 188 § 9; 1911 c 74 § 14; RRS § 7689.]

Implementation—2007 c 77: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 77 § 4.]

Additional notes found at www.leg.wa.gov

51.28.015 Injury reporting—Findings—Department educational initiative—Pilot program, employers to assist workers in applying for benefits—Report. (1) The legislature finds that:

(a) In 1998, the joint legislative audit and review committee, in its performance audit of the Washington industrial insurance system, reported that one of the most significant causes for delayed benefit payments to workers and lack of employer involvement in claims was the manner in which claims were reported. Under this system of reporting, the worker generally reports the injury to a physician who, in turn, reports the injury to the department.

(b) The performance audit further reported that adopting a system in which the employee reports to the employer and the employer reports to the department would speed the first payment of benefits to the worker and involve the employer, from the beginning of the claim, in assisting in the management of the claim, including returning the worker to work.

(c) The performance audit also recognized that there would be instances in which workers would be reluctant to report injuries to employers and that, therefore, the system of physician reporting should be retained as an alternative, and employer reporting should be tested on a widespread basis.

(2) The department of labor and industries shall develop and implement an initiative to:

(a) Encourage the reporting of industrial injuries and occupational diseases by the worker to his or her employer and by the employer to the department;

(b) Encourage the employer to provide assistance to the worker in completing the application for compensation; and

(c) Educate workers and employers about the benefits and importance of prompt reporting of injuries and diseases.

(3)(a) By January 1, 2007, the department shall develop and begin a pilot program to allow employers to assist workers in completing an application for benefits. This pilot program does not replace the current method for reporting as provided in RCW 51.28.020.

(b) The department shall develop requirements or rules for employers who participate in the pilot program, including provisions to ensure prompt reporting of the claim and communicating a worker's rights and responsibilities under the pilot program. The pilot program shall include the voluntary participation of employers that represent a cross-section of industries, geographic areas, union and nonunion workers, large and small businesses, and other criteria established by the department with input of business and labor leaders.

(c) During the pilot period, the department shall consider steps to address the unique needs and issues of small employers.

(d) The number of participating employers must not be more than five hundred during the first year of the pilot program. This number may be increased to seven hundred fifty during the second year of the pilot program.

(e) The pilot program expires July 1, 2009.

(4) On December 1, 2007, and December 1, 2008, the department of labor and industries shall report to the appropriate committees of the legislature the findings of a study of:

(a) Claims that are not reported promptly, including but not limited to a review of the circumstances of such claims, the type of injuries involved in such claims, and the reasons for the failure to report such claims promptly;

(b) The effect of the educational initiative required under subsection (2) of this section on whether the number of claims reported to employers increased, whether there was a reduction in delays in benefit payments, and whether there was an improvement in employer involvement in assisting with claims management and an increase in appropriate return-to-work and better outcomes for injured workers and employers;

(c) The results of the efforts of the centers of occupational health education in early reporting and early notification of employers, and the general lessons that can be drawn from these results for the larger workers' compensation program; and

(d) The results of the pilot program for workers to begin the process of applying for compensation through the employer and whether additional statutory changes are required or recommended to implement this process for all employers and workers. [2006 c 254 § 1; 2005 c 108 § 1.]

51.28.020 Worker's application for compensation—Physician to aid in. (1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician or licensed advanced registered nurse

practitioner who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician or licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If the application required by this section is:

(a) Filed on behalf of the worker by the physician who attended the worker, the physician may transmit the application to the department electronically using facsimile mail;

(b) Made to the department and the employer has not received a copy of the application, the department shall immediately send a copy of the application to the employer; or

(c) Made to a self-insured employer, the employer shall forthwith send a copy of the application to the department. [2005 c 108 § 3; (2005 c 108 § 2 expired June 30, 2007); 2004 c 65 § 4; 2001 c 231 § 2; 1984 c 159 § 3; 1977 ex.s. c 350 § 33; 1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Additional notes found at www.leg.wa.gov

51.28.025 Duty of employer to report injury or disease—Contents of report—Claim suppression—Penalty.

(1) Whenever an employer has notice or knowledge of an injury or occupational disease sustained by any worker in his or her employment who has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, the employer shall immediately report the same to the department on forms prescribed by it. The report shall include:

(a) The name, address, and business of the employer;

(b) The name, address, and occupation of the worker;

(c) The date, time, cause, and nature of the injury or occupational disease;

(d) Whether the injury or occupational disease arose in the course of the injured worker's employment;

(e) All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and

(f) Such other pertinent information as the department may prescribe by regulation.

(2) The employer shall not engage in claim suppression. An employer found to have engaged in claim suppression shall be subject to a penalty of at least two hundred fifty dol-

lars, not to exceed two thousand five hundred dollars, for each offense. The penalty shall be payable to the supplemental pension fund. The department shall adopt rules establishing the amount of penalties, taking into account the size of the employer and whether there are prior findings of claim suppression. When a determination of claim suppression has been made, the employer shall be prohibited from any current or future participation in a retrospective rating program. If self-insured, the director shall withdraw certification as provided in RCW 51.14.080.

(3) When a determination of claim suppression is made and the penalty is assessed, the department shall serve the employer and any affected retrospective rating group with a determination as provided in RCW 51.52.050. The determination may be protested to the department or appealed to the board of industrial insurance appeals. Once the order is final, the amount due shall be collected in accordance with the provisions of RCW 51.48.140 and 51.48.150.

(4) The director, or the director's designee, shall investigate reports or complaints that an employer has engaged in claim suppression as prohibited in RCW 51.28.010(3). The complaints or allegations must be received in writing, and must include the name or names of the individuals or organizations submitting the complaint. In cases where the department can show probable cause, the director may subpoena records from the employer, medical providers, and any other entity that the director believes may have relevant information. The director's investigative and subpoena authority in this subsection is limited solely to investigations into allegations of claim suppression or where the director has probable cause that claim suppression might have occurred.

(5) If the director determines that an employer has engaged in claim suppression and, as a result, the worker has not filed a claim for industrial insurance benefits as prescribed by law, then the director in his or her sole discretion may waive the time limits for filing a claim provided in RCW 51.28.050, if the complaint or allegation of claim suppression is received within two years of the worker's accident or exposure. For the director to exercise this discretion, the claim must be filed with the department within ninety days of the date the determination of claim suppression is issued.

(6) For the purposes of this section, "claim suppression" has the same meaning as in RCW 51.28.010(4). [2007 c 77 § 2; 2004 c 65 § 5; 1987 c 185 § 32; 1985 c 347 § 1; 1975 1st ex.s. c 224 § 5; 1971 ex.s. c 289 § 39.]

Implementation—2007 c 77: See note following RCW 51.28.010.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Additional notes found at www.leg.wa.gov

51.28.030 Beneficiaries' application for compensation—Notification of rights. Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department or self-insurer as the case may be, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician or licensed advanced registered nurse practitioner, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation under this section, notification, in nontechnical language, of their rights under this title. [2004 c 65 § 6; 1972 ex.s. c 43 § 17; 1971 ex.s. c 289 § 6; 1961 c 23 § 51.28.030. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Additional notes found at www.leg.wa.gov

51.28.040 Application for change in compensation. If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. Where the application has been granted, compensation and other benefits if in order shall be allowed for periods of time up to sixty days prior to the receipt of such application. [1977 ex.s. c 199 § 1; 1961 c 23 § 51.28.040. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.050 Time limitation for filing application or enforcing claim for injury. No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued, except as provided in RCW 51.28.055 and 51.28.025(5). [2007 c 77 § 3; 1984 c 159 § 1; 1961 c 23 § 51.28.050. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Implementation—2007 c 77: See note following RCW 51.28.010.

51.28.055 Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules. (1) Except as provided in subsection (2) of this section for claims filed for occupational hearing loss, claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician or a licensed advanced registered nurse practitioner: (a) Of the existence of his or her occupational disease, and (b) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician or licensed advanced registered nurse practitioner shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease.

(2)(a) Except as provided in (b) of this subsection, to be valid and compensable, claims for hearing loss due to occupational noise exposure must be filed within two years of the date of the worker's last injurious exposure to occupational noise in employment covered under this title or within one year of September 10, 2003, whichever is later.

(b) A claim for hearing loss due to occupational noise exposure that is not timely filed under (a) of this subsection can only be allowed for medical aid benefits under chapter 51.36 RCW.

(3) The department may adopt rules to implement this section. [2004 c 65 § 7; 2003 2nd sp.s. c 2 § 1; 1984 c 159 § 2; 1977 ex.s. c 350 § 34; 1961 c 23 § 51.28.055. Prior: 1959 c 308 § 18; prior: 1957 c 70 § 16, part; 1951 c 236 § 1, part.]

Additional notes found at www.leg.wa.gov

51.28.060 Proof of dependency. A dependent shall at all times furnish the department with proof satisfactory to the director of the nature, amount, and extent of the contribution made by the deceased worker.

Proof of dependency by any beneficiary residing without the United States shall be made before the nearest United States consul or consular agency, under the seal of such consul or consular agent, and the department may cause any payments to which such beneficiary is entitled to be transmitted to the beneficiary through the nearest United States consul or consular agent. [2013 c 125 § 5; 1977 ex.s. c 350 § 35; 1961 c 23 § 51.28.060. Prior: 1957 c 70 § 25; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.28.070 Claim files and records confidential. Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. A claimant may review his or her claim file if the director determines, pursuant to criteria adopted by rule, that the review is in the claimant's interest. Employers or their duly authorized representatives may review any files of their own injured workers in connection with any pending claims. Physicians treating or examining workers claiming benefits under this title, or physicians giving medical advice to the department regarding any claim may, at the discretion of the department, inspect the claim files and records of injured workers, and other persons may make such inspection, at the department's discretion, when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this title. [1990 c 209 § 2; 1977 ex.s. c 350 § 36; 1975 1st ex.s. c 224 § 6; 1961 c 23 § 51.28.070. Prior: 1957 c 70 § 51.]

Additional notes found at www.leg.wa.gov

51.28.080 Determination of compensation for temporary total disability—Notification of employer. (1) An employer shall be promptly notified by the department when:

(a) The department has received an application for compensation under this title. If the employer is a state fund employer, the department shall instruct the employer to submit a report of accident form and provide a telephone number for assistance in the reporting process; and

(b) It has determined that a worker of that employer is entitled to compensation under RCW 51.32.090.

(2) Notification shall include, in nontechnical language, an explanation of the employer's rights under this title. [2005 c 108 § 4; 1985 c 338 § 2.]

(2016 Ed.)

51.28.090 Notification of availability of basic health plan. The director shall notify persons receiving time-loss payments under this chapter of the availability of basic health care coverage to qualified enrollees under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the director of closure of enrollment in the plan. The director shall maintain supplies of Washington basic health plan enrollment application forms in all field service offices where the plan is available, which shall be provided in reasonably necessary quantities by the administrator for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 17.]

51.28.100 Physician assistant signatures—Documents required by the department. The department shall accept the signature of a physician assistant on any certificate, card, form, or other documentation required by the department that the physician assistant's supervising physician or physicians may sign, provided that it is within the physician assistant's scope of practice, and is consistent with the terms of the physician assistant's practice arrangement plan as required by chapters 18.57A and 18.71A RCW. Consistent with the terms of this section, the authority of a physician assistant to sign such certificates, cards, forms, or other documentation includes, but is not limited to, the execution of the certificate required in RCW 51.28.020. A physician assistant may not rate a worker's permanent partial disability under RCW 51.32.055. [2007 c 263 § 1.]

Report to legislature—2007 c 263: "By December 1, 2008, the department of labor and industries shall report to the legislature on implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims." [2007 c 263 § 2.]

Effective date—2007 c 263: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 263 § 3.]

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

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Self-insured employer overpayment reimbursement fund: RCW 51.44.142.

Victims of crimes, benefits: Chapter 7.68 RCW.

51.32.010 Who entitled to compensation. Each worker injured in the course of his or her employment, or his or her family or dependents in case of death of the worker, shall receive compensation in accordance with this chapter, and, except as in this title otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever: PROVIDED, That if an injured worker, or the surviving spouse of an injured worker shall not have the legal custody of a child for, or on account of whom payments are required to be made under this title, such payment or payments shall be made to the person or persons having the legal custody of such child but only for the periods of time after the department has been notified of the fact of such legal custody, and it shall be the duty of any such person or persons receiving payments because of legal custody of any child immediately to notify the department of any change in such legal custody. [1977 ex.s. c 350 § 37; 1975 1st ex.s. c 224 § 7; 1971 ex.s. c 289 § 40; 1961 c 23 § 51.32.010. Prior: 1957 c 70 § 26; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1,

part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Additional notes found at www.leg.wa.gov

51.32.015 Time and place of coverage—Lunch period. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her lunch period as established by the employer while on the job-site. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business or work process in which the employer is then engaged: PROVIDED, That if a worker by reason of his or her employment leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: AND PROVIDED FURTHER, That the employer need not consider the lunch period in his or her payroll for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 38; 1971 ex.s. c 289 § 41; 1961 c 107 § 1.]

Additional notes found at www.leg.wa.gov

51.32.020 Who not entitled to compensation. If injury or death results to a worker from the deliberate intention of the worker himself or herself to produce such injury or death, or while the worker is engaged in the attempt to commit, or the commission of, a felony, neither the worker nor the widow, widower, child, or dependent of the worker shall receive any payment under this title.

If injury or death results to a worker from the deliberate intention of a beneficiary of that worker to produce the injury or death, or if injury or death results to a worker as a consequence of a beneficiary of that worker engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased worker and, at the same time, as the stepchild of a deceased worker. [1995 c 160 § 2; 1977 ex.s. c 350 § 39; 1971 ex.s. c 289 § 42; 1961 c 23 § 51.32.020. Prior: 1957 c 70 § 27; prior: (i) 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Additional notes found at www.leg.wa.gov

51.32.025 Payments for children cease at age eighteen—Exceptions. Any payments to or on account of any child or children of a deceased or temporarily or totally permanently disabled worker pursuant to any of the provisions of chapter 51.32 RCW shall terminate when any such child reaches the age of eighteen years unless such child is a dependent invalid child or is permanently enrolled at a full time course in an accredited school, in which case such payments after age eighteen shall be made directly to such child. Pay-

ments to any dependent invalid child over the age of eighteen years shall continue in the amount previously paid on account of such child until he or she shall cease to be dependent. Payments to any child over the age of eighteen years permanently enrolled at a full time course in an accredited school shall continue in the amount previously paid on account of such child until the child reaches an age over that provided for in the definition of "child" in this title or ceases to be permanently enrolled whichever occurs first. Where the worker sustains an injury or dies when any of the worker's children is over the age of eighteen years and is either a dependent invalid child or is a child permanently enrolled at a full time course in an accredited school the payment to or on account of any such child shall be made as herein provided. [2010 c 8 § 14008; 1987 c 185 § 33; 1975 1st ex.s. c 224 § 11.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Additional notes found at www.leg.wa.gov

51.32.030 When compensation payable to employer or member of corporate employer. Any sole proprietor, partner, or joint venturer who has requested coverage under this title and who shall thereafter be injured or sustain an occupational disease, shall be entitled to the benefit of this title, as and under the same circumstances and subject to the same obligations as a worker: PROVIDED, That no such person or the beneficiaries thereof shall be entitled to benefits under this title unless the department has received notice in writing of such request on such forms as the department may provide prior to the date of the injury or occupational disease as the result of which claims are made: PROVIDED, That the department shall have the power to cancel the personal coverage of any such person if any required payments or reports have not been made. [1980 c 14 § 8. Prior: 1977 ex.s. c 350 § 40; 1977 ex.s. c 323 § 14; 1961 c 23 § 51.32.030; prior: 1957 c 70 § 28; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

Additional notes found at www.leg.wa.gov

51.32.040 Protection of awards—Payment after death—Time limitations for filing—Confinement in institution. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this title shall, before the issuance and delivery of the payment, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which produced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving

spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the award or the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) If any worker suffers an injury and dies from it before he or she receives payment of any monthly installment covering time loss for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(c) Any application for compensation under this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death. The department or self-insurer may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries. [2013 c 125 § 6; 2003 c 379 § 27; 1999 c 185 § 1; 1996 c 47 § 1; 1995 c 160 § 3; 1987 c 75 § 7; 1983 c 2 § 13. Prior: 1982 c 201 § 8; 1982 c 109 § 10; 1979 ex.s. c 171 § 11; 1977 ex.s. c 350 § 41; 1975 1st ex.s. c 224 § 8; 1974 ex.s. c 30 § 1; prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51.32.040; prior: 1957 c 70 § 29; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Additional notes found at www.leg.wa.gov

51.32.045 Direct deposit or electronic payment of benefits. Any worker or other recipient of benefits under this title may elect to have any payments due paid by debit card or other electronic means or transferred to such person's account in a financial institution for either: (1) Credit to the recipient's account in such financial institution; or (2) immediate transfer therefrom to the recipient's account in any other financial institution. The debit card or other electronic means payment option is available at the discretion of the department or self-insured employer, and the recipient must request in writing on a department-approved form or other department-approved method that the recipient's payments be made through this payment option.

A single payment may be drawn in favor of such financial institution, for the total amount due the recipients involved, and written directions provided to such financial institution of the amount to be credited to the account of a recipient or to be transferred to an account in another financial institution for such recipient. The issuance and delivery by the disbursing officer of a payment in accordance with the procedure set forth in this section and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the recipient.

For the purposes of this section, "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended. [2013 c 125 § 7; 1982 c 109 § 11.]

51.32.050 Death benefits. (1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each

such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section:

(i) Exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)(d)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW 51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i)(A) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect;

(B) If a surviving spouse is the surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW or the state patrol retirement system under chapter 43.43 RCW, the surviving spouse may receive a lump sum of thirty-six times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and RCW 51.32.075(3) or fifty percent of the remaining annuity value of his or her pension provided under this chapter, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the lump sum benefit shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability

benefits shall elect an option as provided in RCW 51.32.067. [2010 c 261 § 3; 2007 c 284 § 1; 1995 c 199 § 6; 1993 c 521 § 1; 1991 c 88 § 2; 1988 c 161 § 2; 1986 c 58 § 3; 1982 c 63 § 18; 1977 ex.s. c 350 § 42; 1975-'76 2nd ex.s. c 45 § 2; 1975 1st ex.s. c 179 § 1; 1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; 1951 c 115 § 1; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1941 c 209 § 1; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—2007 c 284: "This act takes effect July 1, 2008." [2007 c 284 § 4.]

Legislative intent—1975 1st ex.s. c 179: "The legislative intent of chapter 179, Laws of 1975 1st ex. sess. (2nd SSB No. 2241) was in part to offer surviving spouses of eligible workmen two options upon remarriage; such options to be available to any otherwise eligible surviving spouse regardless of the date of death of the injured workman. Accordingly this 1976 amendatory act is required to clarify that intent." [1975-'76 2nd ex.s. c 45 § 1.]

Additional notes found at www.leg.wa.gov

51.32.055 Determination of permanent disabilities—Closure of claims by self-insurers. (1) One purpose of this title is to restore the injured worker as nearly as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision, except as otherwise authorized in subsection (9) of this section, only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department, except as otherwise authorized in subsection (9) of this section. Either the worker, employer, or self-insurer may make a request or the inquiry may be initiated by the director or, as authorized in subsection (9) of this section, by the self-insurer on the director or the self-insurer's own motion. Determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or, if the self-insurer has made a request to the department, in the possession of or under the control of the self-insurer shall be forwarded to the director with the request.

(3) A request for determination of permanent disability shall be examined by the department or, if authorized in subsection (9) of this section, the self-insurer, and the department shall issue an order in accordance with RCW 51.52.050 or, in the case of a self-insured employer, the self-insurer may: (a) Enter a written order, communicated to the worker and the department self-insurance section in accordance with subsection (9) of this section, or (b) request the department to issue an order in accordance with RCW 51.52.050.

(4) The department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer, as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of the medical bureau in a manner to be determined by the department.

(6) Where a dispute arises from the handling of any claim before the condition of the injured worker becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7)(a) If a claim (i) is accepted by a self-insurer after June 30, 1986, and before August 1, 1997, (ii) involves only medical treatment and the payment of temporary disability compensation under RCW 51.32.090 or only the payment of temporary disability compensation under RCW 51.32.090, (iii) at the time medical treatment is concluded does not involve permanent disability, (iv) is one with respect to which the department has not intervened under subsection (6) of this section, and (v) the injured worker has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted under this subsection (7) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of a claim under (a) of this subsection, the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you must protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order."

(8)(a) If a claim (i) is accepted by a self-insurer after June 30, 1990, and before August 1, 1997, (ii) involves only medical treatment, (iii) does not involve payment of temporary disability compensation under RCW 51.32.090, and (iv) at the time medical treatment is concluded does not involve permanent disability, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you must

protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order."

(b) All determinations of permanent disability for claims accepted under this subsection (8) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(9)(a) If a claim: (i) Is accepted by a self-insurer after July 31, 1997; (ii)(A) involves only medical treatment, or medical treatment and the payment of temporary disability compensation under RCW 51.32.090, and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; or (B) involves only the payment of temporary disability compensation under RCW 51.32.090 and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; (iii) is one with respect to which the department has not intervened under subsection (6) of this section; and (iv) concerns an injured worker who has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) If a physician or licensed advanced registered nurse practitioner submits a report to the self-insurer that concludes that the worker's condition is fixed and stable and supports payment of a permanent partial disability award, and if within fourteen days from the date the self-insurer mailed the report to the attending or treating physician or licensed advanced registered nurse practitioner, the worker's attending or treating physician or licensed advanced registered nurse practitioner disagrees in writing that the worker's condition is fixed and stable, the self-insurer must get a supplemental medical opinion from a provider on the department's approved examiner's list before closing the claim. In the alternative, the self-insurer may forward the claim to the department, which must review the claim and enter a final order as provided for in RCW 51.52.050.

(c) Upon closure of a claim under this subsection (9), the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with such medical benefits and temporary disability compensation as provided to date and with such award for permanent partial disability, if any, as set forth below, and with the condition that you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits, temporary disability compensation provided, or permanent partial disability that has been awarded, you must protest in writing to the Department of Labor and Industries, Self-Insurance Section, within sixty days of the date you received this order. If you do not protest this order to the department, this order will become final."

(d) All determinations of permanent partial disability for claims accepted by self-insurers under this subsection (9) may be made by the self-insurer or the self-insurer may

request a determination by the self-insured section of the department. All determinations shall be made under subsections (1) through (4) of this section.

(10) If the department receives a protest of an order issued by a self-insurer under subsections (7) through (9) of this section, the self-insurer's closure order must be held in abeyance. The department shall review the claim closure action and enter a further determinative order as provided for in RCW 51.52.050. If no protest is timely filed, the closing order issued by the self-insurer shall become final and shall have the same force and effect as a department order that has become final under RCW 51.52.050.

(11) If within two years of claim closure under subsections (7) through (9) of this section, the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits paid or payable. This subsection (11) does not limit in any way the application of RCW 51.32.240.

(12) For the purposes of this section, "comparable wages and benefits" means wages and benefits that are at least ninety-five percent of the wages and benefits received by the worker at the time of injury. [2004 c 65 § 8; 1997 c 416 § 1; 1994 c 97 § 1; 1988 c 161 § 13; 1986 c 55 § 1; 1981 c 326 § 1; 1977 ex.s. c 350 § 43; 1971 ex.s. c 289 § 46.]

Additional notes found at www.leg.wa.gov

51.32.060 Permanent total disability compensation—Personal attendant. (1) When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

(a) If married at the time of injury, sixty-five percent of his or her wages.

(b) If married with one child at the time of injury, sixty-seven percent of his or her wages.

(c) If married with two children at the time of injury, sixty-nine percent of his or her wages.

(d) If married with three children at the time of injury, seventy-one percent of his or her wages.

(e) If married with four children at the time of injury, seventy-three percent of his or her wages.

(f) If married with five or more children at the time of injury, seventy-five percent of his or her wages.

(g) If unmarried at the time of the injury, sixty percent of his or her wages.

(h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages.

(i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages.

(j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages.

(k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages.

(l) If unmarried with five or more children at the time of injury, seventy percent of his or her wages.

(2) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of

the two shall be entitled to claim their child or children for compensation purposes.

(3) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

(4) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

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

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

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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

The limitations under this subsection shall not apply to the payments provided for in subsection (3) of this section.

(6) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(7) The benefits provided by this section are subject to modification under RCW 51.32.067. [2007 c 284 § 2; 1993 c 521 § 2; 1988 c 161 § 1. Prior: 1986 c 59 § 1; 1986 c 58 § 5; 1983 c 3 § 159; 1977 ex.s. c 350 § 44; 1975 1st ex.s. c 224 § 9; 1973 c 147 § 1; 1972 ex.s. c 43 § 20; 1971 ex.s. c 289 § 8; 1965 ex.s. c 122 § 2; 1961 c 274 § 2; 1961 c 23 § 51.32.060; prior: 1957 c 70 § 31; 1951 c 115 § 2; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—2007 c 284: See note following RCW 51.32.050.

Additional notes found at www.leg.wa.gov

51.32.067 Permanent total disability—Death benefit options—Election. (1) After a worker elects one of the options in (a), (b), or (c) of this subsection, that option shall apply only if the worker dies during a period of permanent total disability from a cause unrelated to the injury, leaving a surviving spouse, child, children, or other dependent. If, after making an election under this subsection, a worker dies from a cause related to the injury during a period of permanent total disability, his or her beneficiaries shall receive benefits under RCW 51.32.050 (2) through (5).

(a) **Option I.** An injured worker selecting this option shall receive the benefits provided by RCW 51.32.060, with no benefits being paid to the worker's surviving spouse, children, or others.

(b) **Option II.** An injured worker selecting this option shall receive an actuarially reduced benefit which upon death shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(c) **Option III.** An injured worker selecting this option shall receive an actuarially reduced benefit and, upon death, one-half of the reduced benefit shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(2) The worker shall make the election in writing and the worker's spouse, if any, shall consent in writing as a prerequisite to the election of Option I.

(3) If the worker's nominated beneficiary is the worker's spouse, and the worker and spouse enter into a dissolution of marriage after the nomination has been made, the worker may apply to receive benefits as calculated under Option I. This change is effective the date of the decree of dissolution of marriage, but no more than one year prior to the date application for the change is received in the department, provided the worker submits legally certified documentation of the decree of dissolution of marriage.

(4) If the worker's nominated beneficiary dies, the worker may apply to receive benefits as calculated under Option I. This change is effective the date of death, but no more than one year prior to the date application for the change is received in the department, provided the worker submits a certified copy of the death certificate.

(5) The change in benefits authorized by subsections (3) and (4) of this section is a one-time adjustment and will be permanent for the life of the worker.

(6) The department shall adopt such rules as may be necessary to implement this section. [2006 c 154 § 1; 1986 c 58 § 4.]

51.32.072 Additional payments for prior pensioners—Children—Remarriage—Attendant. (1) Notwithstanding any other provision of law, every surviving spouse and every permanently totally disabled worker or temporarily totally disabled worker, if such worker was unmarried at the time of the worker's injury or was then married but the marriage was later terminated by judicial action, receiving a pension or compensation for temporary total disability under this title pursuant to compensation schedules in effect prior to July 1, 1971, shall after July 1, 1975, through June 30, 2011,

be paid fifty percent of the average monthly wage in the state as computed under RCW 51.08.018 per month and an amount equal to five percent of such average monthly wage per month to such totally disabled worker if married at the time of the worker's injury and the marriage was not later terminated by judicial action, and an additional two percent of such average monthly wage for each child of such totally disabled worker at the time of injury in the legal custody of such totally disabled worker or such surviving spouse up to a maximum of five such children. The monthly payments such surviving spouse or totally disabled worker are receiving pursuant to compensation schedules in effect prior to July 1, 1971 shall be deducted from the monthly payments above specified.

Where such a surviving spouse has remarried, or where any such child of such worker, whether living or deceased, is not in the legal custody of such worker or such surviving spouse there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under compensation schedules in effect prior to July 1, 1971 for the benefit of and on account of each such child. In the case of any child or children of a deceased worker not leaving a surviving spouse or where the surviving spouse has later died, there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under such schedules for the benefit of and on account of each such child.

If the character of the injury or occupational disease is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of this title except for care granted at the discretion of the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments shall not be considered compensation nor shall they be subject to any limitation upon total compensation payments.

No part of such additional payments shall be payable from the accident fund.

The director shall pay monthly from the supplemental pension fund such an amount as will, when added to the compensation theretofore paid under compensation schedules in effect prior to July 1, 1971, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid under this section shall be reduced by the amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve.

(2) In addition to the adjustment under subsection (1) of this section, further adjustments shall be made beginning July 1, 2012, and on each July 1st thereafter. The adjustment shall be the percentage change in the average monthly wage in the state under RCW 51.08.018 for the preceding calendar year, rounded to the nearest whole cent.

(3) Compensation due for July 1, 2011, through June 30, 2012, must be paid based on the average monthly wage in the

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state as computed under RCW 51.08.018 on July 1, 2010. [2011 1st sp.s. c 37 § 201; 1987 c 185 § 34; 1975 1st ex.s. c 224 § 12.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Additional notes found at www.leg.wa.gov

51.32.073 Additional payments for prior pensioners—Premium liability of worker and employer for additional payments. (1) Except as provided in subsection (2) of this section, each employer shall retain from the earnings of each worker that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. The money so retained shall be matched in an equal amount by each employer, and all such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund: PROVIDED, That the state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes. The moneys so collected shall be used exclusively for the additional payments from the supplemental pension fund prescribed in this title and for the amount of any increase payable under the provisions of RCW 51.32.075, as now or hereafter amended, and shall be no more than necessary to make such payments on a current basis. The department may require a self-insurer to make any additional payments which are payable from the supplemental pension fund and thereafter such self-insurer shall be reimbursed therefrom.

(2) None of the amount assessed for the supplemental pension fund under RCW 51.16.210 may be retained from the earnings of workers covered under RCW 51.16.210. [1989 c 385 § 4; 1980 c 14 § 9. Prior: 1977 ex.s. c 350 § 45; 1977 ex.s. c 323 § 15; 1977 ex.s. c 202 § 1; 1975-'76 2nd ex.s. c 19 § 1; prior: 1975 1st ex.s. c 286 § 1; 1975 1st ex.s. c 224 § 10; 1973 c 110 § 3; 1972 ex.s. c 43 § 24; 1971 ex.s. c 289 § 17.]

Additional notes found at www.leg.wa.gov

51.32.075 Adjustments in compensation or death benefits. The compensation or death benefits payable pursuant to the provisions of this chapter for temporary total disability, permanent total disability, or death arising out of injuries or occupational diseases shall be adjusted as follows:

(1) On July 1, 1982, there shall be an adjustment for those whose right to compensation was established on or after July 1, 1971, and before July 1, 1982. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

(2) In addition to the adjustment established by subsection (1) of this section, there shall be another adjustment on July 1, 1983, for those whose right to compensation was

established on or after July 1, 1971, and before July 1983, which shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

(3) In addition to the adjustments under subsections (1) and (2) of this section, further adjustments shall be made beginning on July 1, 1984, and on each July 1st thereafter through July 1, 2010, for those whose right to compensation was established on or after July 1, 1971. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1st of the year in which the adjustment is being made. The department or self-insurer shall adjust the resulting compensation rate to the nearest whole cent, not to exceed the average monthly wage in the state as computed under RCW 51.08.018.

(4) In addition to the adjustments under subsections (1), (2), and (3) of this section, further adjustments shall be made beginning July 1, 2012, and on each July 1st thereafter for those whose right to compensation was established on or after July 1, 1971. The adjustment shall be the percentage change in the average monthly wage in the state under RCW 51.08.018 for the preceding calendar year, rounded to the nearest whole cent. For claims whose right to compensation was established on or after July 1, 2011, no adjustment shall be made under this subsection until the second July 1st following the date of injury or occupational disease manifestation. [2011 1st sp.s. c 37 § 202; 1988 c 161 § 7; 1983 c 203 § 1; 1982 1st ex.s. c 20 § 1; 1979 c 108 § 1; 1977 ex.s. c 202 § 2; 1975 1st ex.s. c 286 § 2.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Additional notes found at www.leg.wa.gov

51.32.080 Permanent partial disability—Specified—Unspecified, rules for classification—Injury after permanent partial disability. (1)(a) Until July 1, 1993, for the permanent partial disabilities here specifically described, the injured worker shall receive compensation as follows:

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$54,000.00
Of leg at or above knee joint with functional stump	48,600.00
Of leg below knee joint	43,200.00
Of leg at ankle (Syme)	37,800.00
Of foot at mid-metatarsals	18,900.00
Of great toe with resection of metatarsal bone	11,340.00
Of great toe at metatarsophalangeal joint	6,804.00

Of great toe at interphalangeal joint	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone	4,140.00
Of lesser toe at metatarsophalangeal joint	2,016.00
Of lesser toe at proximal interphalangeal joint	1,494.00
Of lesser toe at distal interphalangeal joint	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	51,300.00
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	48,600.00
Of all fingers except the thumb at metacarpophalangeal joints	29,160.00
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	19,440.00
Of thumb at interphalangeal joint	9,720.00
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	12,150.00
Of index finger at proximal interphalangeal joint	9,720.00
Of index finger at distal interphalangeal joint	5,346.00
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	9,720.00
Of middle finger at proximal interphalangeal joint	7,776.00
Of middle finger at distal interphalangeal joint	4,374.00
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	4,860.00
Of ring finger at proximal interphalangeal joint	3,888.00
Of ring finger at distal interphalangeal joint	2,430.00
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	2,430.00
Of little finger at proximal interphalangeal joint	1,944.00
Of little finger at distal interphalangeal joint	972.00

MISCELLANEOUS

Loss of one eye by enucleation	21,600.00
Loss of central visual acuity in one eye . . .	18,000.00
Complete loss of hearing in both ears	43,200.00
Complete loss of hearing in one ear	7,200.00

(b) Beginning on July 1, 1993, compensation under this subsection shall be computed as follows:

(i) Beginning on July 1, 1993, the compensation amounts for the specified disabilities listed in (a) of this subsection shall be increased by thirty-two percent; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the compensation amounts for the specified disabilities listed in (a) of this subsection, as adjusted under (b)(i) of this subsection, shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30 immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) Compensation for amputation of a member or part thereof at a site other than those specified in subsection (1) of this section, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation shall be calculated based on the adjusted schedule of compensation in effect for the respective time period as prescribed in subsection (1) of this section.

(3)(a) Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to the disabilities specified in subsection (1) of this section, which most closely resembles and approximates in degree of disability such other disability, and compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment. To reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments.

(b) Until July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars. Beginning on July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be adjusted as follows:

(i) Beginning on July 1, 1993, the amount payable for total bodily impairment under this section shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the amount payable for total bodily impairment prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(c) Until July 1, 1993, the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dol-

lars. Beginning on July 1, 1993, total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed a sum calculated as follows:

(i) Beginning on July 1, 1993, the sum shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(4) If permanent partial disability compensation is followed by permanent total disability compensation, all permanent partial disability compensation paid to the worker under the claim or claims for which total permanent disability compensation is awarded shall be, at the choosing of the injured worker, either: (a) Deducted from the worker's monthly pension benefits until the total award or awards paid are recovered; or (b) deducted from the pension reserve of such injured worker and his or her monthly compensation payments shall be reduced accordingly. Any interest paid on any permanent partial disability compensation may not be deducted from the pension benefits or pension reserve. The provisions of this subsection apply to all permanent total disability determinations issued on or after July 1, 2011.

(5) Should a worker receive an injury to a member or part of his or her body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such worker, his or her compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(6) When the compensation provided for in subsections (1) through (3) of this section exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018. Upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application. Upon the death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

(7) Awards payable under this section are governed by the schedule in effect on the date of injury. [2011 1st sp.s. c 37 § 401; 2007 c 172 § 1; 1993 c 520 § 1; 1988 c 161 § 6; 1986 c 58 § 2; 1982 1st ex.s. c 20 § 2; 1979 c 104 § 1; 1977 ex.s. c 350 § 46; 1972 ex.s. c 43 § 21; 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1,

part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Application—2007 c 172: "This act applies to all pension orders issued on or after July 22, 2007." [2007 c 172 § 2.]

Additional notes found at www.leg.wa.gov

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations—Finding—Rules. (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

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

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

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

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

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

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

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

(b) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practi-

tioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

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

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

(e) If an employer insured with the department offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer shall be eligible for reimbursement for such clothing from the department, up to a maximum of four hundred dollars. However, an employer shall not receive reimbursement for any clothing it provided to the worker that it nor-

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

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

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

(h) An employer shall not receive any wage subsidies or reimbursement of any expenses pursuant to this subsection (4) unless the employer has completed and submitted the reimbursement request on forms developed by the department, along with all related information required by department rules. No wage subsidy or reimbursement shall be paid to an employer who fails to submit a form for such payment within one year of the date the work was performed. In no event shall an employer receive wage subsidy payments or reimbursements of any expenses pursuant to this subsection (4) unless the worker's physician or licensed advanced registered nurse practitioner has restricted him or her from performing his or her usual work and the worker's physician or licensed advanced registered nurse practitioner has released him or her to perform the work offered.

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

(j) Once the worker returns to work under the terms of this subsection (4), he or she shall 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 shall not receive any wage subsidy or other reimbursements for such work.

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

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

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

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

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

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

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

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

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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

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

(11) The department shall adopt rules as necessary to implement this section. [2011 1st sp.s. c 37 § 101. Prior:

2007 c 284 § 3; 2007 c 190 § 1; 2004 c 65 § 9; prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Finding—2011 1st sp.s. c 37: "The legislature finds that Washington state's workers' compensation system should be designed to focus on achieving the best outcomes for injured workers. The state must ensure that the workers' compensation system remains financially healthy in order to provide needed resources for injured workers. Further, the legislature recognizes that reducing the number and cost of long-term disability and pension claims, while strengthening safety programs; addressing workers' compensation system fraud by employers, workers, and providers; finding ways to improve claims management processes; studying occupational disease claims in the workers' compensation system; and establishing a fund for purposes of maintaining low, stable, and predictable premium rate increases are all key to ensuring productive worker outcomes and a financially sound system for Washington workers and employers." [2011 1st sp.s. c 37 § 1.]

Effective date—2011 1st sp.s. c 37: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 1st sp.s. c 37 § 1101.]

Effective date—2007 c 284: See note following RCW 51.32.050.

Additional notes found at www.leg.wa.gov

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers (~~shall~~) must utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection ((4)) (5) of this section *or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid (~~shall~~) must be recovered according to the terms of that section.*

(2) (~~When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used~~) Vocational rehabilitation services may be provided to an injured worker when in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment. In determining whether to provide vocational services and at what level, the following list must be used, in order of priority with the highest priority given to returning a worker to employment:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;

(h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining (~~and job placement~~).

(3) Notwithstanding subsection (2) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services under this subsection are not eligible for option 2 benefits, as provided in RCW 51.32.099(4) and section 5 of this act.

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

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

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

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

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

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

(f) A one-time payment equal to the lesser of ten percent of the worker's wages including commissions and bonuses paid or ten thousand dollars for continuous employment without reduction in base wages for at least twelve months. The twelve months begin the first date of employment and the one-time payment is available at the sole discretion of the supervisor of industrial insurance;

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

(h) The benefits described in (a) through (f) of this subsection (4) are only available in instances where a vocational rehabilitation professional and the injured worker's health care provider have confirmed that the worker has returned to work that is consistent with the worker's limitations and physical restrictions.

(5)(a) (~~For vocational plans approved prior to July 1, 1999~~) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

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

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

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

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

~~((5))~~ (6) In addition to the vocational rehabilitation expenditures provided for under subsection ~~((4))~~ (5) of this section *and RCW 51.32.099*, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 ~~((shall))~~ may not exceed five thousand dollars.

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

(b) For vocational plans approved for a worker between January 1, 2008, through ~~((June 30, 2016))~~ July 31, 2015, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section ~~((shall be))~~ is limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services ~~((shall))~~ must conform to the requirements in RCW 51.32.099.

~~((7))~~ (8) The department ~~((shall))~~ must establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations ~~((used under subsection (1) of this section and under RCW 51.32.099))~~. The state fund ~~((shall))~~ must make referrals for vocational rehabilitation services based on these performance criteria.

~~((8))~~ (9) The department ~~((shall))~~ must engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section ~~((and RCW 51.32.099))~~ including participation by the department as a partner with WorkSource and with the private vocational rehabilitation community to refer workers to these vocational professionals for job search and job placement assistance. As a partner, the department must place vocational professional full-time employees at selected WorkSource locations who will work with employers to market the benefits of on-the-job training programs and preferred worker financial incentives as described in RCW 51.32.095(4). For the purposes of this subsection, "WorkSource" means the established state system that administers the federal workforce investment act of 1998.

~~((9))~~ (10) The benefits in this section ~~((and))~~ RCW 51.32.099 ~~((shall)), and section 5 of this act must~~ be provided for the injured workers of self-insured employers. Self-insurers ~~((shall))~~ must report both benefits provided and benefits denied ~~((under this section and RCW 51.32.099))~~ in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section ~~((or))~~ RCW 51.32.099, or section 5 of this act, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

~~((10))~~ (11) Except as otherwise provided ~~((in this section or RCW 51.32.099))~~, the benefits provided for in this section ~~((and))~~ RCW 51.32.099, and section 5 of this act are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims ~~((shall))~~ may not be reopened solely for vocational rehabilitation purposes. [2015 c 137 § 2; 2013 c 331 § 1; 2011 c 291 § 1; (2007 c 72 § 1 expired June 30, 2016); 2004 c 65 § 10; 1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10; prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

Reviser's note: Italicized language includes 2007 changes that were expired by 2013 c 331 § 5.

Application—2015 c 137 §§ 1, 2, and 6: See note following RCW 51.16.120.

Rules—2015 c 137: See note following RCW 51.32.096.

Effective date—2013 c 331: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 21, 2013]." [2013 c 331 § 8.]

Implementation—Effective date—Expiration date—2007 c 72: See notes following RCW 51.32.099.

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Additional notes found at www.leg.wa.gov

51.32.096 Vocational rehabilitation benefits and options—Advisory committee—Procedures—Requirements—Definitions—Costs.

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

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

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she must be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim must, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department must provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department must also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the com-

mencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation must be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

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

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

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

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

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed seventeen thousand five hundred dollars. This amount must be adjusted effective July 1st of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30th of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges. Effective July 1, 2016, and each July 1st thereafter, the increase cannot exceed two percent per year, unless the amount available would be less than one hundred fifty percent of the average cost of a two-year community college training plan. Effective July 1st following the calendar year in which the amount available is less than one hundred fifty percent of the average cost of a two-year community college plan, costs for newly approved

plans can be up to one hundred fifty percent of this community college plan average. The average cost of two-year community college training plans will be calculated by the department based on plans completed during the preceding calendar year.

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

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

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

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

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

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

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to nine months of temporary total disability compensation under RCW 51.32.090. The award must be reduced by the amount of any temporary total disability compensation paid for days

starting with the first day of the academic quarter or three months' training and for any days through the date the department received the worker's written election of option 2. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments may not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section must remain available to the worker less any amount expended for the worker's participation in the first academic quarter or three months' training, upon application to the department or self-insurer, for a period of five years. The vocational costs must, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. Up to ten percent of the total funds available to the worker can be used for vocational counseling and job placement services. The department must issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department must thereafter close the claim. A worker who elects option 2 benefits is not entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection must be rescinded and the amount paid to the worker must be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If, within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section may not exceed fifteen months.

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

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

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

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational

assistance would prevent permanent total disability under RCW 51.32.060.

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

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

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

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

(a) The worker previously participated in a vocational plan or selected a worker option as described in RCW 51.32.099(4) or in subsection (4) of this section;

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

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

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

(7) The vocational plan costs payable from the medical aid fund must include the costs of temporary total disability benefits, except those payable from the supplemental pension fund, from the date the vocational plan is implemented to the date the worker completes the plan or ceases participation. The vocational costs paid from the medical aid fund may not be charged to the state fund employer's cost experience. [2015 c 137 § 5.]

Application—2015 c 137 § 5: "Section 5 of this act applies to all claims commencing vocational plan development on or after July 31, 2015, without regard to the date of injury or occupational disease manifestation." [2015 c 137 § 10.]

Rules—2015 c 137: "The department of labor and industries is authorized to establish and adopt rules governing the eligibility for and administration of benefits available under RCW 51.16.120, 51.32.095, 51.32.099, 51.44.040, and 51.32.096." [2015 c 137 § 7.]

51.32.098 Vocational rehabilitation services—Applicability. Nothing in RCW 51.32.095 or in the repeal of chapter 51.41 RCW by section 5, chapter 339, Laws of 1985 shall be construed as prohibiting the completion of vocational rehabilitation plans approved under this title prior to May 16, 1985. Injured workers referred for vocational rehabilitation services under this title, but for whom vocational rehabilitation plans have not been approved by the department under this title before May 16, 1985, may only be provided vocational rehabilitation services, if applicable, by the department according to the provisions of RCW 51.32.095. [1985 c 339 § 4.]

Legislative finding—Severability—1985 c 339: See notes following RCW 51.32.095.

51.32.099 Vocational rehabilitation pilot program—Vocational plans. (1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through ~~(June 30, 2016)~~ July 31, 2015. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department ~~((shall))~~ must establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with *RCW 51.32.0991.

(b) In implementing the pilot program, the department ~~((shall))~~ must:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department ~~((shall))~~ must place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee ~~((shall))~~ must provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee ~~((shall))~~ must report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee ~~((shall))~~ must provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee ~~((shall))~~ must provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury. The subcommittee ~~((shall))~~ must also consider options that, under limited circumstances, would allow injured workers to attend

baccalaureate institutions under their vocational rehabilitation plans and, by December 31, 2013, the subcommittee ~~((shall))~~ must provide recommendations to the director and the legislature on statutory changes needed to develop those options.

(iv) In collaboration with the subcommittee, the department ~~((shall))~~ must develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature with the final report due by December 1, ~~((2015))~~ 2014. The final report ~~((shall))~~ must include an assessment and recommendations for further legislative action.

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

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she ~~((shall))~~ must be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim ~~((shall))~~ must, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department ~~((shall))~~ must provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

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

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

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

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

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause ~~((shall))~~ must be provided in rule. The frequency and reasons for good cause extensions ~~((shall))~~ must be reported to the subcommittee created under subsection (1) (b)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount ~~((shall))~~ must be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

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

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

(4) Vocational plan development services ((shall)) must be completed within ninety days of commencing. Except as provided in RCW 51.32.095(3), during vocational plan development the worker ((shall)) must, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan ((shall)) must be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker ((shall)) must elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of the department's approval of the plan or of a determination that the plan is valid following a dispute, elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the department's approval of the plan or of a determination that the plan is valid following a dispute if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve an election for option 2 benefits that was submitted more than twenty-five days after the department's approval of a retraining plan or of a determination that a plan is valid following a dispute.

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

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

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments ((shall)) may not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section ((shall)) must remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs ((shall)) must, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department ((shall)) must issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department ((shall)) must thereafter close the claim. A worker who elects option 2 benefits ((shall not be)) is not entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection will be rescinded and the amount paid to the worker will be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the

duration of any vocational plan under subsection (3)(e) of this section ((shall)) may not exceed eighteen months.

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

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

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

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

(5)(a) As used in this section, "vocational plan interruption" means an occurrence ((which)) that disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

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

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits ((shall)) must be suspended in accordance with RCW 51.32.110, including the opportunity for the worker to demonstrate good cause. If plan development or implementation is recommenced, the cost and duration of the plan ((shall)) may not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section. [2015 c 137 § 4. Prior: (2013 c 331 § 2 expired June 30, 2016); 2013 c 326 § 1; 2011 c 291 § 2; (2009 c 353 § 5 expired June 30, 2016); (2007 c 72 § 2 expired June 30, 2016).]

Reviser's note: *(1) RCW 51.32.0991 expired June 30, 2016.

(2) Chapter 331, Laws of 2013 extended the expiration of this section to June 30, 2016. Chapter 137, Laws of 2015 amended this section but did not expire the amendments on June 30, 2016.

Rules—2015 c 137: See note following RCW 51.32.096.

Expiration date—2013 c 331 § 2: "Section 2 of this act expires June 30, 2016." [2013 c 331 § 7.]

Effective date—2013 c 331: See note following RCW 51.32.095.

Expiration date—2013 c 331; 2009 c 353 § 5: "Section 5 of this act expires June 30, 2016." [2013 c 331 § 4; 2009 c 353 § 7.]

Implementation—2007 c 72: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 72 § 4.]

Effective date—2007 c 72: "This act takes effect January 1, 2008." [2007 c 72 § 5.]

Expiration date—2013 c 331; 2007 c 72: "This act expires June 30, 2016." [2013 c 331 § 5; 2007 c 72 § 6.]

51.32.100 Preexisting disease. If it is determined that an injured worker had, at the time of his or her injury, a pre-existing disease and that such disease delays or prevents complete recovery from such injury, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability which the injury

would have caused were it not for the disease, and compensation shall be awarded only therefor. [1977 ex.s. c 350 § 49; 1971 ex.s. c 289 § 44; 1961 c 23 § 51.32.100. Prior: 1957 c 70 § 34; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Additional notes found at www.leg.wa.gov

51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost. (1) Any worker entitled to receive any benefits or claiming such under this title shall, if requested by the department or self-insurer, submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the worker and as may be provided by the rules of the department. An injured worker, whether an alien or other injured worker, who is not residing in the United States at the time that a medical examination is requested may be required to submit to an examination at any location in the United States determined by the department or self-insurer.

(2) If the worker refuses to submit to medical examination, or obstructs the same, or, if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery or refuse or obstruct evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or the self-insurer upon approval by the department, with notice to the worker may suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period: PROVIDED, That the department or the self-insurer shall not suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if a worker has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section.

(3) If the worker necessarily incurs traveling expenses in attending the examination pursuant to the request of the department, such traveling expenses shall be repaid to him or her out of the accident fund upon proper voucher and audit or shall be repaid by the self-insurer, as the case may be.

(4)(a) If the medical examination required by this section causes the worker to be absent from his or her work without pay:

(i) In the case of a worker insured by the department, the worker shall be paid compensation out of the accident fund in an amount equal to his or her usual wages for the time lost from work while attending the medical examination; or

(ii) In the case of a worker of a self-insurer, the self-insurer shall pay the worker an amount equal to his or her usual wages for the time lost from work while attending the medical examination.

(b) This subsection (4) shall apply prospectively to all claims regardless of the date of injury. [1997 c 325 § 3; 1993 c 375 § 1; 1980 c 14 § 11. Prior: 1977 ex.s. c 350 § 50; 1977 ex.s. c 323 § 17; 1971 ex.s. c 289 § 13; 1961 c 23 § 51.32.110;

prior: 1917 c 28 § 18; 1915 c 188 § 5; 1911 c 74 § 13; RRS § 7688.]

Additional notes found at www.leg.wa.gov

51.32.112 Medical examination—Standards and criteria—Special examinations by chiropractors—Compensation guidelines and reporting criteria. (1) The department shall develop standards for the conduct of special medical examinations to determine permanent disabilities, including, but not limited to:

(a) The qualifications of persons conducting the examinations;

(b) The criteria for conducting the examinations, including guidelines for the appropriate treatment of injured workers during the examination; and

(c) The content of examination reports.

(2) Within the appropriate scope of practice, chiropractors licensed under chapter 18.25 RCW may conduct special medical examinations to determine permanent disabilities in consultation with physicians licensed under chapter 18.57 or 18.71 RCW. The department, in its discretion, may request that a special medical examination be conducted by a single chiropractor if the department determines that the sole issues involved in the examination are within the scope of practice under chapter 18.25 RCW. However, nothing in this section authorizes the use as evidence before the board of a chiropractor's determination of the extent of a worker's permanent disability if the determination is not requested by the department.

(3) The department shall investigate the amount of examination fees received by persons conducting special medical examinations to determine permanent disabilities, including total compensation received for examinations of department and self-insured claimants, and establish compensation guidelines and compensation reporting criteria.

(4) The department shall investigate the level of compliance of self-insurers with the requirement of full reporting of claims information to the department, particularly with respect to medical examinations, and develop effective enforcement procedures or recommendations for legislation if needed. [1993 c 515 § 4; 1988 c 114 § 2.]

Intent—1988 c 114: "It is the intent of the legislature that medical examinations for determining permanent disabilities be conducted fairly and objectively by qualified examiners and with respect for the dignity of the injured worker." [1988 c 114 § 1.]

51.32.114 Medical examination—Department to monitor quality and objectivity. The department shall examine the credentials of persons conducting special medical examinations and shall monitor the quality and objectivity of examinations and reports for the department and self-insured claimants. The department shall adopt rules to ensure that examinations are performed only by qualified persons meeting department standards. [1988 c 114 § 3.]

Intent—1988 c 114: See note following RCW 51.32.112.

51.32.120 Further accident after lump sum payment. Should a further accident occur to a worker who has been previously the recipient of a lump sum payment under this title, his or her future compensation shall be adjusted according to the other provisions of this chapter and with regard to

the combined effect of his or her injuries and his or her past receipt of money under this title. [1977 ex.s. c 350 § 51; 1961 c 23 § 51.32.120. Prior: 1957 c 70 § 35; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.130 Lump sum for death or permanent total disability. In case of death or permanent total disability, the monthly payment provided may be converted, in whole or in part, into a lump sum payment, not in any case to exceed eight thousand five hundred dollars, equal or proportionate, as the case may be, to the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made only upon written application (in case of minor children the application may be by either parent) to the department and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and applicant. In the event any payment shall be due to an alien residing in a foreign country, the department may settle the same by making a lump sum payment in such amount as may be agreed to by such alien, not to exceed fifty percent of the value of the annuity then remaining.

Nothing herein shall preclude the department from making, and authority is hereby given it to make, on its own motion, lump sum payments equal or proportionate, as the case may be, to the value of the annuity then remaining, in full satisfaction of claims due to dependents. [1961 c 23 § 51.32.130. Prior: 1957 c 70 § 45; prior: 1941 c 209 § 2; 1929 c 132 § 3; 1927 c 310 § 6(i); 1917 c 29 § 22; 1911 c 74 § 7; Rem. Supp. 1941 § 7681.]

51.32.135 Closing of claim in pension cases—Consent of spouse. In pension cases when a worker or beneficiary closes his or her claim by full conversion to a lump sum or in any other manner as provided in RCW 51.32.130 and 51.32.150, such action shall be conclusive and effective to bar any subsequent application or claim relative thereto by the worker or any beneficiary which would otherwise exist had such person not elected to close the claim: PROVIDED, The director may require the spouse of such worker to consent in writing as a prerequisite to conversion and/or the closing of such claim. [1977 ex.s. c 350 § 52; 1973 1st ex.s. c 154 § 98; 1961 c 23 § 51.32.135. Prior: 1953 c 143 § 1.]

Additional notes found at www.leg.wa.gov

51.32.140 Nonresident alien beneficiary. Except as otherwise provided by treaty or this title, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, the department or self-insurer, as the case may be, shall pay the compensation to which a resident beneficiary is entitled under this title. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he or she shall receive no compensation.

(2016 Ed.)

No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due. [1997 c 325 § 5; 1971 ex.s. c 289 § 45; 1961 c 23 § 51.32.140. Prior: 1957 c 70 § 36; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Additional notes found at www.leg.wa.gov

51.32.150 Lump sum to beneficiary outside state. If a beneficiary shall reside or move out of the state, the department may, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, but in no case to exceed the sum provided in RCW 51.32.130 as now or hereafter amended). [1977 ex.s. c 323 § 18; 1961 c 23 § 51.32.150. Prior: 1959 c 308 § 5; 1957 c 70 § 37; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Additional notes found at www.leg.wa.gov

51.32.160 Aggravation, diminution, or termination. (1)(a) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the director may, upon application of the worker made at any time, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. The department shall promptly mail a copy of the application to the employer at the employer's last known address as shown by the records of the department.

(b) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, or examination.

(c) Applications for benefits where the claim has been closed without medical recommendation, advice, or examination are not subject to the seven year limitation of this section. The preceding sentence shall not apply to any closing order issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall, for the purposes of this section only, be deemed issued on July 1, 1985. The time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes.

(d) If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application shall be deemed granted. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

(2) If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for

the disability without producing medical evidence that shows that a diminution of the disability has occurred.

(3) No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be grounds for such readjustment. [1995 c 253 § 2; 1988 c 161 § 11; 1986 c 59 § 4; 1973 1st ex.s. c 192 § 1; 1961 c 23 § 51.32.160. Prior: 1957 c 70 § 38; prior: 1951 c 115 § 5; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.180 Occupational diseases—Limitation. Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title, except as follows: (a) [(1)] This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (b) [(2)] for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim. [1988 c 161 § 5; 1977 ex.s. c 350 § 53; 1971 ex.s. c 289 § 49; 1961 c 23 § 51.32.180. Prior: 1959 c 308 § 19; prior: 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

Additional notes found at www.leg.wa.gov

51.32.185 Occupational diseases—Presumption of occupational disease for firefighters—Limitations—Exception—Rules. (1) In the case of firefighters as defined in *RCW 41.26.030(4) (a), (b), and (c) who are covered under Title 51 RCW and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, there shall exist a prima facie presumption that: (a) Respiratory disease; (b) any heart problems, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; (c) cancer; and (d) infectious diseases are occupational diseases under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(2) The presumptions established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment.

(3) The presumption established in subsection (1)(c) of this section shall only apply to any active or former firefighter who has cancer that develops or manifests itself after the firefighter has served at least ten years and who was given a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer. The presumption within subsection (1)(c) of this section shall only apply to prostate cancer diagnosed prior to the age of fifty, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

(4) The presumption established in subsection (1)(d) of this section shall be extended to any firefighter who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

(5) Beginning July 1, 2003, this section does not apply to a firefighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use. The department, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a firefighter from the provisions of this section.

(6) For purposes of this section, "firefighting activities" means fire suppression, fire prevention, emergency medical services, rescue operations, hazardous materials response, aircraft rescue, and training and other assigned duties related to emergency response.

(7)(a) When a determination involving the presumption established in this section is appealed to the board of industrial insurance appeals and the final decision allows the claim for benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

(c) When reasonable costs of the appeal must be paid by the department under this section in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim. [2007 c 490 § 2; 2002 c 337 § 2; 1987 c 515 § 2.]

***Reviser's note:** RCW 41.26.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4)(a), (b), and (c) to subsection (16)(a), (b), and (c).

Legislative findings—1987 c 515: "The legislature finds that the employment of firefighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that firefighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be presumed to be occupationally related for industrial insurance purposes for firefighters." [1987 c 515 § 1.]

51.32.190 Self-insurers—Notice of denial of claim, reasons—Procedure—Powers and duties of director. (1) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the reasons therefor and that the director will rule on the matter

shall be mailed or given to the claimant and the director within thirty days after the self-insurer has notice of the claim.

(2) Until such time as the department has entered an order in a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his or her rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(3) Upon making the first payment of income benefits, the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director. Upon request of the department on a form prescribed by the department, the self-insurer shall submit a record of the payment of income benefits including initial, termination or terminations, and change or changes to the benefits. Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at regular semimonthly or biweekly intervals.

(4) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the worker or his or her beneficiaries shall not be considered a binding determination of their rights under this title.

(5) The director: (a) May, upon his or her own initiative at any time in a case in which payments are being made without an award; and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such medical examinations to be made, hold such hearings, require the submission of further information, make such orders, decisions or awards, and take such further action as he or she considers will properly determine the matter and protect the rights of all parties.

(6) The director, upon his or her own initiative, may make such inquiry as circumstances require or is necessary to protect the rights of all the parties and he or she may enact rules and regulations providing for procedures to ensure fair and prompt handling by self-insurers of the claims of workers and beneficiaries. [1996 c 58 § 2; 1982 1st ex.s. c 20 § 3; 1977 ex.s. c 350 § 54; 1972 ex.s. c 43 § 25; 1971 ex.s. c 289 § 47.]

Additional notes found at www.leg.wa.gov

51.32.195 Self-insurers—Information to department.

On any industrial injury claim where the self-insured employer or injured worker has requested a determination by the department, the self-insurer must submit all medical reports and any other specified information not previously submitted to the department. When the department requests information from a self-insurer by certified mail, the self-insurer shall submit all information in its possession concern-

ing a claim within ten working days from the date of receipt of such certified notice. [1987 c 290 § 1.]

51.32.200 Self-insurers—Enforcement of compensation order against. (1) If a self-insurer fails, refuses, or neglects to comply with a compensation order which has become final and is not subject to review or appeal, the director or any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which the self-insurer may be served with process.

(2) The court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1971 ex.s. c 289 § 48.]

Additional notes found at www.leg.wa.gov

51.32.210 Claims of injured workers, prompt action—Payment—Acceptance—Effect. Claims of injured workers of employers who have secured the payment of compensation by insuring with the department shall be promptly acted upon by the department. Where temporary disability compensation is payable, the first payment thereof shall be mailed within fourteen days after receipt of the claim at the department's offices in Olympia and shall continue at regular semimonthly intervals. The payment of this or any other benefits under this title, prior to the entry of an order by the department in accordance with RCW 51.52.050 as now or hereafter amended, shall be not considered a binding determination of the obligations of the department under this title. The acceptance of compensation by the worker or his or her beneficiaries prior to such order shall likewise not be considered a binding determination of their rights under this title. [1977 ex.s. c 350 § 55; 1972 ex.s. c 43 § 26.]

51.32.215 Payment of compensation after appeal—Enforcement of order—Penalty. (1)(a) If the worker or beneficiary in a state fund claim prevails in an appeal by any party to the board or the court, the department shall comply with the board or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period specified in (a)(i) of this subsection, requested the filing by the worker or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate

relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person entitled to compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1995 c 276 § 1.]

Additional notes found at www.leg.wa.gov

51.32.220 Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions. (1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal. [2007 c 255 § 1; 2005 c 198 § 1; 2004 c 92 § 1; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

Additional notes found at www.leg.wa.gov

51.32.225 Reduction in total disability compensation—Offset for social security retirement benefits. (1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C. This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to July 1, 1986.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6) and with any other procedures

established by the department to administer this section. For any worker whose entitlement to social security retirement benefits is immediately preceded by an entitlement to social security disability benefits, the offset shall be based on the formulas provided under 42 U.S.C. Sec. 424a. For all other workers entitled to social security retirement benefits, the offset shall be based on procedures established and determined by the department to most closely follow the intent of RCW 51.32.220.

(3) Any reduction in compensation made under chapter 58, Laws of 1986, shall be made before the reduction established in this section. [2006 c 163 § 1; 1986 c 59 § 5.]

Additional notes found at www.leg.wa.gov

51.32.230 Recovery of overpayments. Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of RCW 51.32.220 as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his or her discretion, may make restitution in those cases where an extraordinary hardship has been created. [2010 c 8 § 14009; 1979 ex.s. c 151 § 2.]

Additional notes found at www.leg.wa.gov

51.32.240 Erroneous payments—Payments induced by willful misrepresentation—Adjustment for self-insurer's failure to pay benefits—Recoupment of overpayments by self-insurer—Penalty—Appeal—Enforcement of orders. (1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim whether state fund or self-insured.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience. However, if the director waives in whole or in part any such payments due a self-insurer, the self-insurer shall be reimbursed the amount waived from the self-insured employer overpayment reimbursement fund.

(b) The department shall collect information regarding self-insured claim overpayments resulting from final decisions of the board and the courts, and recoup such overpayments on behalf of the self-insurer from any open, new, or reopened state fund or self-insured claims. The department shall forward the amounts collected to the self-insurer to whom the payment is owed. The department may provide information as needed to any self-insurers from whom payments may be collected on behalf of the department or another self-insurer. Notwithstanding RCW 51.32.040, any self-insurer requested by the department to forward payments to the department pursuant to this subsection shall pay the department directly. The department shall credit the amounts recovered to the appropriate fund, or forward amounts collected to the appropriate self-insurer, as the case may be.

(c) If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection process pursuant to this subsection and by means of

processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount due from the self-insured employer overpayment reimbursement fund.

(d) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(e) The department or self-insurer shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would have provided health insurance benefits but for workers' compensation coverage.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

- (i) Willful false statement; or
- (ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any

county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by a method for which receipt can be confirmed or tracked accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an

employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer. [2011 c 290 § 6; 2008 c 280 § 2; 2004 c 243 § 7; 2001 c 146 § 10. Prior: 1999 c 396 § 1; 1999 c 119 § 1; 1991 c 88 § 1; 1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

Effective date—2008 c 280: "Section 2 of this act takes effect January 1, 2009." [2008 c 280 § 6.]

Application—2008 c 280: See note following RCW 51.52.050.

Additional notes found at www.leg.wa.gov

51.32.242 Self-insured employer overpayment reimbursement fund—Withholding from worker earnings—Use of funds—Exception. (1) Except as provided in subsection (2) of this section, each self-insured employer shall retain from the earnings of each of its workers that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. These moneys shall only be retained from employees and remitted to the department in such manner and at such intervals as the department directs and shall be placed in the self-insured employer overpayment reimbursement fund. The moneys so collected shall be used exclusively for reimbursement to the reserve fund and to self-insured employers for benefits overpaid during the pendency of board or court appeals in which the self-insured employer prevails and has not recovered, and shall be no more than necessary to make such payments on a current basis.

(2) None of the amount assessed for the employer overpayment reimbursement fund under this section may be retained from the earnings of workers covered under RCW 51.16.210. [2008 c 280 § 3.]

Application—2008 c 280: See note following RCW 51.52.050.

51.32.250 Payment of job modification costs. Modification of the injured worker's previous job or modification of a new job is recognized as a desirable method of returning the injured worker to gainful employment. In order to assist employers in meeting the costs of job modification, and to encourage employers to modify jobs to accommodate retaining or hiring workers with disabilities resulting from work-related injury, the supervisor or the supervisor's designee, in his or her discretion, may pay job modification costs in an amount not to exceed five thousand dollars per worker per job modification. This payment is intended to be a cooperative participation with the employer and funds shall be taken from the appropriate account within the second injury fund.

The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. [1988 c 161 § 10; 1983 c 70 § 3; 1982 c 63 § 13.]

Additional notes found at www.leg.wa.gov

51.32.260 Compensation for loss or damage to personal effects. Workers otherwise entitled to compensation under this title may also claim compensation for loss of or damage to the worker's personal clothing, footwear or protective equipment resulting from the industrial accident or incurred in the course of emergency medical treatment for injuries. [1983 c 111 § 1.]

51.32.300 State employee vocational rehabilitation coordinator. The director shall appoint a state employee vocational rehabilitation coordinator who shall provide technical assistance and coordination of claims management to state agencies and institutions of higher education under the state return-to-work programs created by RCW 41.06.490 and *28B.16.300. [1990 c 204 § 5.]

***Reviser's note:** RCW 28B.16.300 was repealed by 1993 c 281 § 68, effective July 1, 1993.

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.

51.32.350 Chemically related illness—Criteria and procedures for claims—Claims management. (1) By July 1, 1994, the department shall establish interim criteria and procedures for management of claims involving chemically related illness to ensure consistency and fairness in the adjudication of these claims. The criteria and procedures shall apply to employees covered by the state fund and employees of self-insured employers. The department shall adopt final criteria and procedures by December 31, 1994, and report the criteria and procedures as required under section 5, chapter 265, Laws of 1994.

(2) The special procedures developed by the department shall include procedures to determine which claims involving chemically related illness require expert management. The department shall assign claims managers with special training or expertise to manage these claims. [1994 c 265 § 1.]

51.32.360 Chemically related illness—Centers for research and clinical assessment. The department shall work with the department of health to establish one or more centers for research and clinical assessment of chemically related illness. [1994 c 265 § 3.]

51.32.370 Chemically related illness—Research projects—Implementation plan—Funding—Deductions from employees' pay. (1) The department shall conduct research on chemically related illnesses, which shall include contracting with recognized medical research institutions. The department shall develop an implementation plan for research based on sound scientific research criteria, such as double blind studies, and shall include adequate provisions for peer review, and submit the plan to the worker's [workers'] compensation advisory committee for review and approval. Following approval of the plan, all specific proposals for projects under the plan shall be submitted for review to a scientific advisory committee, established to provide scientific oversight of research projects, and to the workers' compensation advisory committee. The department shall include a research project that encourages regional cooperation in addressing chemically related illness.

(2) Expenditures for research projects shall be within legislative appropriations from the medical aid fund, with

self-insured employers and the state fund each paying a pro rata share, based on the number of worker hours, of the authorized expenditures. For the purposes of this subsection only, self-insured employers may deduct from the pay of each of their employees one-half of the share charged to the employer for the expenditures from the medical aid fund. [1994 c 265 § 4.]

51.32.380 Injured offenders—Benefits sent in the care of the department of corrections—Exception—Liability. If the department of labor and industries has received notice that an injured worker entitled to benefits payable under this chapter is in the custody of the department of corrections pursuant to a conviction and sentence, the department shall send all such benefits to the worker in care of the department of corrections, except those benefits payable to a beneficiary as provided in RCW 51.32.040 (3)(c) and (4). Failure of the department to send such benefits to the department of corrections shall not result in liability to any party for either department. [2003 c 379 § 26.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Additional notes found at www.leg.wa.gov

Chapter 51.36 RCW MEDICAL AID

Sections

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51.36.010 Findings—Minimum standards for providers—Health care provider network—Advisory group—Best practices treatment guidelines—Extent and duration of treatment—Centers for occupational health and education—Rules—Reports. (1) The legislature finds that high quality medical treatment and adherence to occupational health best practices can prevent disability and reduce loss of family income for workers, and lower labor and insurance costs for employers. Injured workers deserve high qual-

ity medical care in accordance with current health care best practices. To this end, the department shall establish minimum standards for providers who treat workers from both state fund and self-insured employers. The department shall establish a health care provider network to treat injured workers, and shall accept providers into the network who meet those minimum standards. The department shall convene an advisory group made up of representatives from or designees of the workers' compensation advisory committee and the industrial insurance medical and chiropractic advisory committees to consider and advise the department related to implementation of this section, including development of best practices treatment guidelines for providers in the network. The department shall also seek the input of various health care provider groups and associations concerning the network's implementation. Network providers must be required to follow the department's evidence-based coverage decisions and treatment guidelines, policies, and must be expected to follow other national treatment guidelines appropriate for their patient. The department, in collaboration with the advisory group, shall also establish additional best practice standards for providers to qualify for a second tier within the network, based on demonstrated use of occupational health best practices. This second tier is separate from and in addition to the centers for occupational health and education established under subsection (5) of this section.

(2)(a) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced registered nurse practitioner of his or her own choice, if conveniently located, except as provided in (b) of this subsection, and proper and necessary hospital care and services during the period of his or her disability from such injury.

(b) Once the provider network is established in the worker's geographic area, an injured worker may receive care from a nonnetwork provider only for an initial office or emergency room visit. However, the department or self-insurer may limit reimbursement to the department's standard fee for the services. The provider must comply with all applicable billing policies and must accept the department's fee schedule as payment in full.

(c) The department, in collaboration with the advisory group, shall adopt policies for the development, credentialing, accreditation, and continued oversight of a network of health care providers approved to treat injured workers. Health care providers shall apply to the network by completing the department's provider application which shall have the force of a contract with the department to treat injured workers. The advisory group shall recommend minimum network standards for the department to approve a provider's application, to remove a provider from the network, or to require peer review such as, but not limited to:

(i) Current malpractice insurance coverage exceeding a dollar amount threshold, number, or seriousness of malpractice suits over a specific time frame;

(ii) Previous malpractice judgments or settlements that do not exceed a dollar amount threshold recommended by the advisory group, or a specific number or seriousness of malpractice suits over a specific time frame;

(iii) No licensing or disciplinary action in any jurisdiction or loss of treating or admitting privileges by any board, commission, agency, public or private health care payer, or hospital;

(iv) For some specialties such as surgeons, privileges in at least one hospital;

(v) Whether the provider has been credentialed by another health plan that follows national quality assurance guidelines; and

(vi) Alternative criteria for providers that are not credentialed by another health plan.

The department shall develop alternative criteria for providers that are not credentialed by another health plan or as needed to address access to care concerns in certain regions.

(d) Network provider contracts will automatically renew at the end of the contract period unless the department provides written notice of changes in contract provisions or the department or provider provides written notice of contract termination. The industrial insurance medical advisory committee shall develop criteria for removal of a provider from the network to be presented to the department and advisory group for consideration in the development of contract terms.

(e) In order to monitor quality of care and assure efficient management of the provider network, the department shall establish additional criteria and terms for network participation including, but not limited to, requiring compliance with administrative and billing policies.

(f) The advisory group shall recommend best practices standards to the department to use in determining second tier network providers. The department shall develop and implement financial and nonfinancial incentives for network providers who qualify for the second tier. The department is authorized to certify and decertify second tier providers.

(3) The department shall work with self-insurers and the department utilization review provider to implement utilization review for the self-insured community to ensure consistent quality, cost-effective care for all injured workers and employers, and to reduce administrative burden for providers.

(4) The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed. In all accepted claims, treatment shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent

pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the pharmacy quality assurance commission as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

(5)(a) The legislature finds that the department and its business and labor partners have collaborated in establishing centers for occupational health and education to promote best practices and prevent preventable disability by focusing additional provider-based resources during the first twelve weeks following an injury. The centers for occupational health and education represent innovative accountable care systems in an early stage of development consistent with national health care reform efforts. Many Washington workers do not yet have access to these innovative health care delivery models.

(b) To expand evidence-based occupational health best practices, the department shall establish additional centers for occupational health and education, with the goal of extending access to at least fifty percent of injured and ill workers by December 2013 and to all injured workers by December 2015. The department shall also develop additional best practices and incentives that span the entire period of recovery, not only the first twelve weeks.

(c) The department shall certify and decertify centers for occupational health and education based on criteria including institutional leadership and geographic areas covered by the center for occupational health and education, occupational health leadership and education, mix of participating health care providers necessary to address the anticipated needs of injured workers, health services coordination to deliver occupational health best practices, indicators to measure the success of the center for occupational health and education, and agreement that the center's providers shall, if feasible, treat certain injured workers if referred by the department or a self-insurer.

(d) Health care delivery organizations may apply to the department for certification as a center for occupational health and education. These may include, but are not limited to, hospitals and affiliated clinics and providers, multispecialty clinics, health maintenance organizations, and organized systems of network physicians.

(e) The centers for occupational health and education shall implement benchmark quality indicators of occupational health best practices for individual providers, developed in collaboration with the department. A center for occupational health and education shall remove individual providers who do not consistently meet these quality benchmarks.

(f) The department shall develop and implement financial and nonfinancial incentives for center for occupational health and education providers that are based on progressive and measurable gains in occupational health best practices, and that are applicable throughout the duration of an injured or ill worker's episode of care.

(g) The department shall develop electronic methods of tracking evidence-based quality measures to identify and improve outcomes for injured workers at risk of developing prolonged disability. In addition, these methods must be used to provide systematic feedback to physicians regarding quality of care, to conduct appropriate objective evaluation of progress in the centers for occupational health and education, and to allow efficient coordination of services.

(6) If a provider fails to meet the minimum network standards established in subsection (2) of this section, the department is authorized to remove the provider from the network or take other appropriate action regarding a provider's participation. The department may also require remedial steps as a condition for a provider to participate in the network. The department, with input from the advisory group, shall establish waiting periods that may be imposed before a provider who has been denied or removed from the network may reapply.

(7) The department may permanently remove a provider from the network or take other appropriate action when the provider exhibits a pattern of conduct of low quality care that exposes patients to risk of physical or psychiatric harm or death. Patterns that qualify as risk of harm include, but are not limited to, poor health care outcomes evidenced by increased, chronic, or prolonged pain or decreased function due to treatments that have not been shown to be curative, safe, or effective or for which it has been shown that the risks of harm exceed the benefits that can be reasonably expected based on peer-reviewed opinion.

(8) The department may not remove a health care provider from the network for an isolated instance of poor health and recovery outcomes due to treatment by the provider.

(9) When the department terminates a provider from the network, the department or self-insurer shall assist an injured worker currently under the provider's care in identifying a new network provider or providers from whom the worker can select an attending or treating provider. In such a case, the department or self-insurer shall notify the injured worker that he or she must choose a new attending or treating provider.

(10) The department may adopt rules related to this section.

(11) The department shall report to the workers' compensation advisory committee and to the appropriate committees of the legislature on each December 1st, beginning in 2012 and ending in 2016, on the implementation of the provider network and expansion of the centers for occupational health and education. The reports must include a summary of actions taken, progress toward long-term goals, outcomes of

key initiatives, access to care issues, results of disputes or controversies related to new provisions, and whether any changes are needed to further improve the occupational health best practices care of injured workers. [2013 c 19 § 48; 2011 c 6 § 1; 2007 c 134 § 1; 2004 c 65 § 11; 1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective date—2011 c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 6 § 2.]

Report to legislature—2007 c 134: "By December 1, 2009, the department of labor and industries must report to the senate labor, commerce, research and development committee and the house of representatives commerce and labor committee, or successor committees, on the implementation of this act." [2007 c 134 § 2.]

Effective date—2007 c 134: "This act takes effect January 1, 2008." [2007 c 134 § 3.]

Additional notes found at www.leg.wa.gov

51.36.015 Chiropractic care and evaluation. Subject to the other provisions of this title, the health services that are available to an injured worker under RCW 51.36.010 include chiropractic care and evaluation. For the purposes of assisting the department in making claims determinations, an injured worker may be required by the department to undergo examination by a chiropractor licensed under chapter 18.25 RCW. [1994 c 94 § 1.]

51.36.017 Licensed advanced registered nurse practitioners. Licensed advanced registered nurse practitioners are recognized as independent practitioners and, subject to the provisions of this title, the health services available to an injured worker under RCW 51.36.010 include health services provided by licensed advanced registered nurse practitioners within their scope of practice. [2004 c 65 § 16.]

Additional notes found at www.leg.wa.gov

51.36.020 Transportation to treatment—Artificial substitutes and mechanical aids—Modifications to residences or motor vehicles. (1) When the injury to any worker is so serious as to require his or her being taken from the place of injury to a place of treatment, his or her employer shall, at the expense of the medical aid fund, or self-insurer, as the case may be, furnish transportation to the nearest place of proper treatment.

(2) Every worker whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes and every worker, who suffers an injury to an eye producing an error of refraction, shall be once provided proper and properly equipped lenses to correct such error of refraction and his or her disability rating shall be based upon the loss of sight before correction.

(3) Every worker whose accident results in damage to or destruction of an artificial limb, eye, or tooth, shall have same repaired or replaced.

(4) Every worker whose hearing aid or eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced. The

department or self-insurer shall be liable only for the cost of restoring damaged hearing aids or eyeglasses to their condition at the time of the accident.

(5)(a) All mechanical appliances necessary in the treatment of an injured worker, such as braces, belts, casts, and crutches, shall be provided and all mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed, notwithstanding any other provision of law.

(b) Injured workers shall be reimbursed for reasonable travel expenses when travel is required in order to repair, replace, or otherwise alter prosthetics, orthotics, or similar permanent mechanical appliances after closure of the claim. This subsection (5)(b) does not include travel for the repair or replacement of hearing aid devices.

(6) A worker, whose injury is of such short duration as to bring him or her within the time limit provisions of RCW 51.32.090, shall nevertheless receive during the omitted period medical, surgical, and hospital care and service and transportation under the provisions of this chapter.

(7) Whenever in the sole discretion of the supervisor it is reasonable and necessary to provide residence modifications necessary to meet the needs and requirements of the worker who has sustained catastrophic injury, the department or self-insurer may be ordered to pay an amount not to exceed the state's average annual wage for one year as determined under RCW 50.04.355, as now existing or hereafter amended, toward the cost of such modifications or construction. Such payment shall only be made for the construction or modification of a residence in which the injured worker resides. Only one residence of any worker may be modified or constructed under this subsection, although the supervisor may order more than one payment for any one home, up to the maximum amount permitted by this section.

(8)(a) Whenever in the sole discretion of the supervisor it is reasonable and necessary to modify a motor vehicle owned by a worker who has become an amputee or becomes paralyzed because of an industrial injury, the supervisor may order up to fifty percent of the state's average annual wage for one year, as determined under RCW 50.04.355, to be paid by the department or self-insurer toward the costs thereof.

(b) In the sole discretion of the supervisor after his or her review, the amount paid under this subsection may be increased by no more than four thousand dollars by written order of the supervisor.

(9) The benefits provided by subsections (7) and (8) of this section are available to any otherwise eligible worker regardless of the date of industrial injury. [2008 c 54 § 1; 1999 c 395 § 1; 1982 c 63 § 12; 1977 ex.s. c 350 § 57; 1975 1st ex.s. c 224 § 14; 1971 ex.s. c 289 § 51; 1965 ex.s. c 166 § 3; 1961 c 23 § 51.36.020. Prior: 1959 c 256 § 3; prior: 1951 c 236 § 6; 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Additional notes found at www.leg.wa.gov

51.36.022 Residence modification assistance—Rules—Report to legislature. (1) The legislature finds that there is a need to clarify the process and standards under

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which the department provides residence modification assistance to workers who have sustained catastrophic injury.

(2) The director shall adopt rules that take effect no later than nine months after July 24, 2005, to establish guidelines and processes for residence modification pursuant to RCW 51.36.020(7).

(3) In developing rules under this section, the director shall consult with interested persons, including persons with expertise in the rehabilitation of catastrophically disabled individuals and modifications for adaptive housing.

(4) These rules must address at least the following:

(a) The process for a catastrophically injured worker to access the residence modification benefits provided by RCW 51.36.020; and

(b) How the department may address the needs and preferences of the individual worker on a case-by-case basis taking into account information provided by the injured worker. For purposes of determining the needs and requirements of the worker under RCW 51.36.020, including whether a modification is medically necessary, the department must consider all available information regarding the medical condition and physical restrictions of the injured worker, including the opinion of the worker's attending health services provider.

(5) The rules should be based upon nationally accepted guidelines and publications addressing adaptive residential housing. The department must consider the guidelines established by the United States department of veterans affairs in their publication entitled "Handbook for Design: Specially Adapted Housing," and the recommendations published in "The Accessible Housing Design File" by Barrier Free Environments, Inc.

(6) In developing rules under this section, the director shall consult with other persons with an interest in improving standards for adaptive housing.

(7) The director shall report by December 2007 to the appropriate committees of the legislature on the rules adopted under this section. [2005 c 411 § 1.]

51.36.030 First aid. Every employer, who employs workers, shall keep as required by the department's rules a first aid kit or kits equipped as required by such rules with materials for first aid to his or her injured workers. Every employer who employs fifty or more workers, shall keep one first aid station equipped as required by the department's rules with materials for first aid to his or her injured workers, and shall cooperate with the department in training one or more employees in first aid to the injured. The maintenance of such first aid kits and stations shall be deemed to be a part of any safety and health standards established under Title 49 RCW. [1980 c 14 § 12. Prior: 1977 ex.s. c 350 § 58; 1977 ex.s. c 323 § 20; 1961 c 23 § 51.36.030; prior: 1959 c 256 § 4; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Additional notes found at www.leg.wa.gov

51.36.040 Time and place of coverage—Lunch period. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her

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lunch period as established by the employer while on the jobsite. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business of work process in which the employer is then engaged: PROVIDED, That if a worker by reason of his or her employment leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: AND PROVIDED FURTHER, That the employer need not consider the lunch period in worker hours for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 59; 1961 c 107 § 2.]

51.36.050 Rehabilitation center—Contracts with self-insurers and others. The department may operate and control a rehabilitation center and may contract with self-insurers, and any other persons who may be interested, for use of any such center on such terms as the director deems reasonable. [1979 ex.s. c 42 § 1; 1971 ex.s. c 289 § 52.]

Additional notes found at www.leg.wa.gov

51.36.060 Duties of attending physician or licensed advanced registered nurse practitioner—Medical information. Physicians or licensed advanced registered nurse practitioners examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information. [2004 c 65 § 12; 1991 c 89 § 3; 1989 c 12 § 17; 1975 1st ex.s. c 224 § 15; 1971 ex.s. c 289 § 53.]

Additional notes found at www.leg.wa.gov

51.36.070 Medical examination—Reports—Costs. Whenever the director or the self-insurer deems it necessary in order to resolve any medical issue, a worker shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department or self-insurer shall provide the physician performing an examination with all relevant medical records from the worker's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the worker of reasonable expenses connected therewith. [2001 c 152 § 2; 1977 ex.s. c 350 § 60; 1971 ex.s. c 289 § 54.]

Additional notes found at www.leg.wa.gov

51.36.080 Payment of fees and medical charges by department—Interest—Cost-effective payment meth-

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ods—Audits. (1) All fees and medical charges under this title shall conform to the fee schedule established by the director and shall be paid within sixty days of receipt by the department of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the department prior to final adjudication of claim allowance. The department shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

Beginning in fiscal year 1987, interest payments under this subsection may be paid only from funds appropriated to the department for administrative purposes.

Nothing in this section may be construed to require the payment of interest on any billing, fee, or charge if the industrial insurance claim on which the billing, fee, or charge is predicated is ultimately rejected or the billing, fee, or charge is otherwise not allowable.

In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner without unduly restricting access to necessary care by persons entitled to the care. With respect to workers admitted as hospital inpatients on or after July 1, 1987, the director shall pay for inpatient hospital services on the basis of diagnosis-related groups, contracting for services, or other prudent, cost-effective payment method, which the director shall establish by rules adopted in accordance with chapter 34.05 RCW.

(2) The director may establish procedures for selectively or randomly auditing the accuracy of fees and medical billings submitted to the department under this title. [1998 c 245 § 104; 1993 c 159 § 2; 1987 c 470 § 1; 1985 c 368 § 2; 1985 c 338 § 1; 1971 ex.s. c 289 § 55.]

Legislative findings—1985 c 368: "The legislature finds that:

(1) The governor's steering committee on the six-year state health care purchasing plan has estimated that health care expenditures by the department of labor and industries will rise from \$172.5 million in fiscal year 1985 to \$581.5 million in fiscal year 1991, an increase of two hundred thirty-seven percent in six years, while the number of persons receiving the care will rise only fifteen percent in the same period;

(2) The growing cost of health care for covered workers is a major cause of recent industrial insurance premium increases, adversely affecting both employers and employees;

(3) The department of labor and industries has not developed adequate means of controlling the costs of health care services to which covered workers are entitled by law;

(4) There is a need for all agencies of the state to act as prudent buyers in purchasing health care." [1985 c 368 § 1.]

Additional notes found at www.leg.wa.gov

51.36.085 Payment of fees and medical charges by self-insurers—Interest. All fees and medical charges under this title shall conform to regulations promulgated, and the fee schedule established by the director and shall be paid within sixty days of receipt by the self-insured of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the self-insured prior to final adjudication of claim allowance. The self-insured shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment

period exceeds the applicable sixty-day period on all proper fees and medical charges. [1993 c 159 § 3; 1987 c 316 § 4.]

51.36.090 Review of billings—Investigation of unauthorized services. An employer may request review of billings for any medical and surgical services received by a worker by submitting written notice to the department. The department shall investigate the billings and determine whether the worker received services authorized under this title. Whenever such medical or surgical services are determined to be unauthorized, the department shall not charge the costs of such services to the employer's account. [1985 c 337 § 3.]

51.36.100 Audits of health care providers authorized. The legislature finds and declares it to be in the public interest of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of medical, chiropractic, dental, vocational, and other health services to industrially injured workers pursuant to Title 51 RCW. In order to effectively accomplish such purpose and to assure that the industrially injured worker receives such services as are paid for by the state of Washington, the acceptance by the industrially injured worker of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department of labor and industries or the director's authorized representative to inspect and audit all records in connection with the provision of such services. [1993 c 515 § 5; 1986 c 200 § 1.]

51.36.110 Audits of health care providers—Powers of department. The director of the department of labor and industries or the director's authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical, chiropractic, dental, vocational, and other health services furnished to industrially injured workers pursuant to Title 51 RCW. In the conduct of such audits or investigations, the director or the director's authorized representatives may examine all records, or portions thereof, including patient records, for which services were rendered by a health services provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health services provider, and that the disclosure of any records or information obtained under authority of this section by the department of labor and industries is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department: AND PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health services provider to any liability for breach of any confidential relationships between the provider and the patient: AND PROVIDED FURTHER, That the director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

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(2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW;

(3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and

(4) Pursue collection of unpaid overpayments and/or penalties plus interest accrued from health care providers pursuant to RCW 51.32.240(6). [2004 c 243 § 6; 2004 c 65 § 13; 1994 c 154 § 312; 1993 c 515 § 6; 1986 c 200 § 2.]

Reviser's note: This section was amended by 2004 c 65 § 13 and by 2004 c 243 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

51.36.120 Confidential information. When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.56 RCW. [2005 c 274 § 325; 1989 c 189 § 2.]

Additional notes found at www.leg.wa.gov

51.36.130 False, misleading, or deceptive advertising or representations. In addition to other authority granted under this chapter, the department may deny applications of health care providers to participate as a provider of services to injured workers under this title, or terminate or suspend providers' eligibility to participate, if the provider uses or causes or promotes the use of, advertising matter, promotional materials, or other representation, however disseminated or published, that is false, misleading, or deceptive with respect to the industrial insurance system or benefits for injured workers under this title. [1997 c 336 § 2.]

51.36.140 Industrial insurance medical advisory committee—Duties—Membership. (1) The department shall establish an industrial insurance medical advisory committee. The industrial insurance medical advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective treatments for injured workers, including but not limited to the development of practice guidelines and coverage criteria, review of coverage decisions and technology assessments, review of medical programs, and review of rules pertaining to health care issues. The industrial insurance medical advisory committee may provide peer review and advise and assist the department in the resolution of controversies, disputes, and problems between the department and the providers of medical care. The industrial insurance medical advisory committee must consider the best available scientific evidence and expert opinion of committee members. The department may hire any expert or service or create an ad hoc committee, group, or subcommittee it deems necessary to fulfill the purposes of the industrial insurance medical advisory committee. In addition, the industrial insurance medical advisory committee may consult nationally recognized experts in evidence-based health care on particularly controversial issues.

(2) The industrial insurance medical advisory committee is composed of up to fourteen members appointed by the

director. The members must not include any department employees. The director shall select twelve members from the nominations provided by statewide clinical groups, specialties, and associations, including but not limited to the following: Family or general practice, orthopedics, neurology, neurosurgery, general surgery, physical medicine and rehabilitation, psychiatry, internal medicine, osteopathic, pain management, and occupational medicine. At least two members must be physicians who are recognized for expertise in evidence-based medicine. The director may choose up to two additional members, not necessarily from the nominations submitted, who have expertise in occupational medicine.

(3) The industrial insurance medical advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance medical advisory committee, including hired experts and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance medical advisory committee; and (b) may be compensated for participation in the work of the industrial insurance medical advisory committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance medical advisory committee.

(5) The members of the industrial insurance medical advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance medical advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance medical advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

(7) The industrial insurance medical advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology assessment program and those of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance medical advisory committee under Title 51 RCW.

(8) Neither the industrial insurance medical advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance medical advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance medical advisory committee review a medical issue related to industrial insurance and provide a written report to the house

of representatives commerce and labor committee and the senate labor, commerce, research and development committee, or successor committees. The industrial insurance medical advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance medical advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance medical advisory committee is not required to act on the request. [2007 c 282 § 1.]

Report to legislature—2007 c 282: "The director, the industrial insurance medical advisory committee, and the industrial insurance chiropractic advisory committee shall report to the appropriate committees of the legislature on the following:

(1) A summary of the types of issues reviewed by the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee and decisions in each matter;

(2) Whether the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee became involved in the resolution of any disputes or controversies and the results of those disputes or controversies as a result of the involvement of the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee;

(3) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee conducted any peer reviews and the results of those reviews;

(4) The extent of any practice guidelines or coverage criteria developed by the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee and the success of those developments; and

(5) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee provided advice on coverage decisions and technology assessments.

The report is due no later than June 30, 2011, and must contain a recommendation about whether the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee should continue as originally configured or whether any changes are needed." [2007 c 282 § 3.]

51.36.150 Industrial insurance chiropractic advisory committee—Duties—Membership. (1) The department shall establish an industrial insurance chiropractic advisory committee. The industrial insurance chiropractic advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective chiropractic treatments for injured workers. The industrial insurance chiropractic advisory committee may provide peer review and advise and assist the department in the resolution of controversies, disputes, and problems between the department and the providers of chiropractic care.

(2) The industrial insurance chiropractic advisory committee is composed of up to nine members appointed by the director. The members must not include any department employees. The director must consider nominations from recognized statewide chiropractic groups such as the Washington state chiropractic association. At least two members must be chiropractors who are recognized for expertise in evidence-based practice or occupational health.

(3) The industrial insurance chiropractic advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance chiropractic advisory committee and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance chiropractic advisory committee; and (b) may be

compensated for participation in the work of the industrial insurance chiropractic advisory committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance chiropractic advisory committee.

(5) The members of the industrial insurance chiropractic advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance chiropractic advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance chiropractic advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

(7) The industrial insurance chiropractic advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology assessment program and those of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance chiropractic advisory committee under Title 51 RCW.

(8) Neither the industrial insurance chiropractic advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance chiropractic advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance chiropractic advisory committee review a medical issue related to industrial insurance and provide a written report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee, or successor committees. The industrial insurance chiropractic advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance chiropractic advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance chiropractic advisory committee is not required to act on the request. [2007 c 282 § 2.]

Report to legislature—2007 c 282: See note following RCW 51.36.140.

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Chapter 51.44 RCW FUNDS

Sections

51.44.010	Accident fund.
51.44.020	Medical aid fund.
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51.44.033	Supplemental pension fund.
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51.44.080	Reserve fund—Transfers from state fund—Surplus—Deficiency.
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51.44.180	Stay-at-work program—Administrative expenses—Advisory committee.

Self-insured employer overpayment reimbursement fund—Withholding from worker earnings—Use of funds—Exception: RCW 51.32.242.

51.44.010 Accident fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "accident fund." [1961 c 23 § 51.44.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

51.44.020 Medical aid fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "medical aid fund." [1961 c 23 § 51.44.020. Prior: 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 28 § 4, part; RRS § 7713, part.]

51.44.023 Industrial insurance rainy day fund—Administration—Advisory committee. (1) There shall be, in the custody of the state treasurer, a fund to be known and designated as the industrial insurance rainy day fund.

(2) The director shall be the administrator of the fund, may transfer moneys into and out of the fund only as authorized by this section, and shall separately account for moneys in the fund from the accident and medical aid funds. The assets of this fund shall not be used for any purposes other than meeting the obligations of this title.

(3) Before proposing premium rates as provided in RCW 51.16.035, the director shall determine whether the assets of the accident and medical aid funds combined are at least ten percent but not more than thirty percent in excess of its funded liabilities, and if so transfer any excess to the industrial insurance rainy day fund, unless doing so would:

(a) Threaten the department's ability to meet the obligations of this title;

(b) Result in total assets of the rainy day fund combined with the assets of the accident and medical aid funds to

exceed thirty percent of the accident and medical aid funds' liabilities.

(4) The workers' compensation advisory committee shall create a finance subcommittee made up of six members, three of whom shall represent business, and three of whom shall represent workers. The director or director's designee shall chair the committee. The committee shall provide recommendations for any changes to subsection (3)(b) of this section to the appropriate committees of the legislature by December 1, 2011.

(5) When adopting premium rates, the director may transfer moneys from the industrial insurance rainy day fund into the accident fund or medical aid fund upon finding that the transfer is necessary to reduce a rate increase or aid businesses in recovering from or during economic recessions. The director may also transfer moneys from this fund at any time liabilities increase so that total liabilities exceed assets of the accident fund, medical aid fund, or both.

(6) Notwithstanding chapter 51.52 RCW, the director's decisions regarding transfers into and out of the industrial insurance rainy day fund are not reviewable by any court or tribunal, but must be announced as part of the rule-making process for setting premium rates, and must be part of the department's rule-making file required by chapter 34.05 RCW. [2011 1st sp.s. c 37 § 601.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.44.030 Reserve fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "reserve fund." [1961 c 23 § 51.44.030. Prior: 1957 c 70 § 39; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.033 Supplemental pension fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. The fund shall be used for the sole purposes of making the additional payments therefrom prescribed in this title and the loans therefrom authorized in *RCW 49.86.190. [2007 c 357 § 23; 1975 1st ex.s. c 224 § 16; 1971 ex.s. c 289 § 18.]

*Reviser's note: RCW 49.86.190 expired October 1, 2011.

Additional notes found at www.leg.wa.gov

51.44.040 Second injury fund. (1) There is in the office of the state treasurer a fund to be known and designated as the "second injury fund," which may be used only for the purpose of defraying charges against employers and for supporting return-to-work outcomes for injured workers as provided in RCW 51.16.120, 51.32.095(4), and 51.32.250. The fund must be administered by the director. The state treasurer must be the custodian of the second injury fund and is authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund must be made pursuant to rules adopted by the director. Costs of these payments may not affect the experience rating of employers insured by the state fund.

(3)(a) Assessments for the second injury fund must be imposed on self-insurers pursuant to rules adopted by the director. Such rules must provide for at least the following:

(i) Except as provided in (a)(ii) of this subsection, the amount assessed each self-insurer must be in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund.

(ii) Except as provided in section 2, chapter 475, Laws of 2005, beginning with assessments imposed on or after July 1, 2009, the department must experience rate the amount assessed each self-insurer as long as the aggregate amount assessed is in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund. The experience rating factor must provide equal weight to the ratio between expenditures made by the second injury fund for claims of the self-insurer to the total expenditures made by the second injury fund for claims of all self-insurers for the prior three fiscal years and the ratio of workers' compensation claim payments under this title made by the self-insurer to the total worker's compensation claim payments made by all self-insurers under this title for the prior three fiscal years. The weighted average of these two ratios must be divided by the latter ratio to arrive at the experience factor.

(b) For purposes of this subsection, "expenditures made by the second injury fund" mean the costs and charges described under RCW 51.32.250 and 51.16.120(4), and the amounts assessed to the second injury fund as described under RCW 51.16.120(1). Under no circumstances does "expenditures made by the second injury fund" include any subsequent payments, assessments, or adjustments for pensions, where the applicable second injury fund entitlement was established outside of the three fiscal years. [2015 c 137 § 6; 2005 c 475 § 1; 1982 c 63 § 14; 1977 ex.s. c 323 § 21; 1972 ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

Application—2015 c 137 §§ 1, 2, and 6: See note following RCW 51.16.120.

Rules—2015 c 137: See note following RCW 51.32.096.

Additional notes found at www.leg.wa.gov

51.44.050 Catastrophe injury account. There shall be a special account within the accident fund to be known as the "catastrophe injury account" which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.130. [1961 c 23 § 51.44.050. Prior: 1959 c 308 § 6; 1957 c 70 § 40; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.060 Charge to accident fund for the catastrophe injury account. The charge to the accident fund to defray charges against the catastrophe injury account shall be made pursuant to rules and regulations promulgated by the director. [1972 ex.s. c 43 § 28; 1961 c 23 § 51.44.060. Prior: 1959 c 308 § 7; 1957 c 70 § 41; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.070 Transfer from accident fund, accounts to reserve fund—Annuity values—Self-insurers—Penalty for delay or refusal of reimbursement. (1) For every case resulting in death or permanent total disability the department shall transfer on its books from the accident fund of the proper class and/or appropriate account to the "reserve fund" a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this title provided to be made for the case. Such annuity values shall be based upon rates of mortality, disability, remarriage, and interest as determined by the department, taking into account the experience of the reserve fund in such respects.

Similarly, a self-insurer in these circumstances shall pay into the reserve fund a sum of money computed in the same manner, and the disbursements therefrom shall be made as in other cases.

(2) As an alternative to payment procedures otherwise provided under law, in the event of death or permanent total disability to workers of self-insured employers, a self-insured employer may upon establishment of such obligation file with the department a bond, an assignment of account from a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington, or purchase an annuity, in an amount deemed by the department to be reasonably sufficient to insure payment of the pension benefits provided by law. Any purchase of an annuity shall be from an institution meeting the following minimum requirements: (a) The institution must be rated no less than "A+" by A.M. Best, and no less than "AA" by Moody's and by Standard & Poor's; (b) the value of the assets of the institution must not be less than ten billion dollars; (c) not more than ten percent of the institution's assets may include bonds that are rated less than "BBB" by Moody's and Standard & Poor's; (d) not more than five percent of the assets may be held as equity in real estate; and (e) not more than twenty-five percent of the assets may be first mortgages, and not more than five percent may be second mortgages. The department shall adopt rules governing assignments of account and annuities. Such rules shall ensure that the funds are available if needed, even in the case of failure of the banking institution, the institution authorized to provide annuities, or the employer's business.

The annuity value for every such case shall be determined by the department based upon the department's experience as to rates of mortality, disability, remarriage, and interest. The amount of the required bond, assignment of account, or annuity may be reviewed and adjusted periodically by the department, based upon periodic redeterminations by the department as to the outstanding annuity value for the case.

Under such alternative, the department shall administer the payment of this obligation to the beneficiary or beneficiaries. The department shall be reimbursed for all such payments from the self-insured employer through periodic charges not less than quarterly in a manner to be determined by the director. The self-insured employer shall additionally pay to the department a deposit equal to the first three months' payments otherwise required under RCW 51.32.050 and 51.32.060. Such deposit shall be placed in the reserve fund in accordance with RCW 51.44.140 and shall be returned to the respective self-insured employer when

monthly payments are no longer required for such particular obligation.

If a self-insurer delays or refuses to reimburse the department beyond fifteen days after the reimbursement charges become due, there shall be a penalty paid by the self-insurer upon order of the director of an additional amount equal to twenty-five percent of the amount then due which shall be paid into the pension reserve fund. Such an order shall conform to the requirements of RCW 51.52.050. [1992 c 124 § 1; 1989 c 190 § 1; 1983 c 312 § 1; 1981 c 325 § 1; 1971 ex.s. c 289 § 56; 1961 c 274 § 5; 1961 c 23 § 51.44.070. Prior: 1959 c 308 § 8; 1957 c 70 § 42; prior: 1951 c 236 § 7; 1941 c 169 § 1; Rem. Supp. 1941 § 7705-2; prior: 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Additional notes found at www.leg.wa.gov

51.44.080 Reserve fund—Transfers from state fund—Surplus—Deficiency. The department shall notify the state treasurer from time to time, of such transfers as a whole from the state fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. As soon as possible after June 30th of each year the department shall expert the reserve fund to ascertain its standing as of June 30th of that year and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to the fund. The department shall promptly report the result of the examination to the state treasurer in writing not later than September 30th following. If the report shows that there was on said June 30th, in the reserve fund in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the state fund but, if the report shows the contrary condition of the reserve fund, the deficiency shall be forthwith made good out of the state fund. [1989 c 190 § 2; 1988 c 161 § 8; 1972 ex.s. c 43 § 29; 1971 ex.s. c 289 § 57; 1961 c 23 § 51.44.080. Prior: 1957 c 70 § 43; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.090 Reserve fund record and maintenance by state treasurer. The state treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve fund shall at all times, as nearly as may be, be properly and fully invested and, to meet current demands for pension or lump sum payments, may, if necessary, make temporary loans to the reserve fund out of the accident fund, repaying the same from the earnings of the reserve fund or from collections of its investments or, if necessary, sales of the same. [1972 ex.s. c 43 § 31; 1961 c 23 § 51.44.090. Prior: 1957 c 70 § 44; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.100 Investment of accident, medical aid, reserve, industrial insurance rainy day, supplemental pension funds. Whenever, in the judgment of the state investment board, there shall be in the accident fund, medical aid fund, reserve fund, industrial insurance rainy day fund, or the supplemental pension fund, funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board may invest and reinvest such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

The state investment board may give consideration to the investment of excess funds in federally insured student loans made to persons in vocational training or retraining or reeducation programs. The state investment board may make such investments by purchasing from savings and loan associations, commercial banks, mutual savings banks, credit unions and other institutions authorized to be lenders under the federally insured student loan act, organized under federal or state law and operating in this state loans made by such institutions to residents of the state of Washington particularly for the purpose of vocational training or reeducation: PROVIDED, That the state investment board shall purchase only that portion of any loan which is guaranteed or insured by the United States of America, or by any agency or instrumentality of the United States of America: PROVIDED FURTHER, That the state investment board is authorized to enter into contracts with such savings and loan associations, commercial banks, mutual savings banks, credit unions, and other institutions authorized to be lenders under the federally insured student loan act to service loans purchased pursuant to this section at an agreed upon contract price. [2011 1st sp.s. c 37 § 602; 1990 c 80 § 1; 1981 c 3 § 41; 1973 1st ex.s. c 103 § 6; 1972 ex.s. c 92 § 2; 1965 ex.s. c 41 § 1; 1961 c 281 § 10; 1961 c 23 § 51.44.100. Prior: 1959 c 244 § 1; 1935 c 90 § 1; RRS § 7705-1.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Legislative finding—Purpose—1972 ex.s. c 92: "The legislature finds that the accident fund, medical aid fund and reserve funds could be invested in such a manner as to promote vocational training and retraining or reeducation among the workers of this state. The legislature recognizes that federally insured student loans are already available to students at institutions of higher education. The legislature declares that the purpose of this 1972 amendatory act is to encourage the state finance committee to consider making some investment funds available for investment in federally insured student loans made to persons enrolled in vocational training and retraining or reeducation programs." [1972 ex.s. c 92 § 1.]

Motor vehicle fund warrants for state highway acquisition: RCW 47.12.180 through 47.12.240.

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

Student loans: RCW 28B.10.280.

Uniform Minor Student Capacity to Borrow Act: Chapter 26.30 RCW.

Additional notes found at www.leg.wa.gov

51.44.110 Disbursements of funds. Disbursement out of the several funds shall be made only upon warrants or payments drawn by the department. The state treasurer shall pay every warrant or payment out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant or payment is drawn wherewith to pay the same, the employer on account of

whose worker it was that the warrant or payment was drawn shall pay the same, and he or she shall be credited upon his or her next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable and, if the amount of the credit shall exceed the amount of the contribution, he or she shall have a warrant or payment upon the same fund for the excess and, if any such warrant or payment shall not be so paid, it shall remain, nevertheless, payable out of the fund. [2013 c 125 § 8; 1977 ex.s. c 350 § 68; 1973 c 106 § 30; 1961 c 23 § 51.44.110. Prior: 1911 c 74 § 26, part; RRS § 7705, part.]

51.44.115 Financial statements and information—Annual audit and report. (1) The department shall:

(a) Prepare financial statements on the state fund in accordance with generally accepted accounting principles, including but not limited to financial statements on the accident fund, the medical aid fund, the supplemental pension fund, and the second injury fund. Statements must be presented separately by fund and in the aggregate; and

(b) Prepare financial information for the accident fund, medical aid fund, and pension reserve fund based on statutory accounting practices and principles promulgated by the national association of insurance commissioners for the purpose of maintaining actuarial solvency of these funds.

(2) Beginning in 2006, and, to avoid duplication, coordinated with any audit that may be conducted under RCW 43.09.310, the state auditor shall conduct annual audits of the state fund. As part of the audits required under this section, the state auditor may contract with firms qualified to perform all or part of the financial audit, as necessary.

(a) The firm or firms conducting the reviews shall be familiar with the accounting standards applicable to the accounts under review and shall have experience in workers' compensation reserving, discounting, and rate making.

(b) The scope of the financial audit shall include, but is not limited to:

(i) An opinion on whether the financial statements were prepared in accordance with generally accepted accounting principles;

(ii) An assessment of the financial impact of the proposed rate level on the actuarial solvency of the accident, medical aid, and pension reserve funds, taking into consideration the risks inherent with insurance and the effects of the actuarial assumptions, discount rates, reserving, retrospective rating program, refunds, and individual employer rate classes, as well as the standard accounting principles used for insurance underwriting purposes; and

(iii) A statement of actuarial opinion on whether the loss and loss adjustment expense reserves for the accident, medical aid, and pension reserve funds were prepared in accordance with generally accepted actuarial principles.

(c) The department shall cooperate with the state auditor in all respects and shall permit the state auditor full access to all information deemed necessary for a true and complete review.

(d) The cost of the audit shall be paid by the state fund under separate contract.

(3) The state auditor shall issue an annual report to the governor, the leaders of the majority and minority caucuses

in the senate and the house of representatives, the director of the office of financial management, and the director of the department, on the results of the financial audit and reviews, within six months of the end of the fiscal year. The report may include recommendations.

(4) The audit report shall be available for public inspection.

(5) Within ninety days after the state auditor completes and delivers to the appropriate authority an audit under subsection (2) of this section, the director of the department shall notify the state auditor in writing of the measures taken and proposed to be taken, if any, to respond to the recommendations of the audit report. The state auditor may extend the ninety-day period for good cause. [2005 c 387 § 1.]

51.44.120 Liability of state treasurer. The state treasurer shall be liable on his or her official bond for the safe custody of the moneys and securities of the several funds, but all of the provisions of law relating to state depositaries and to the deposit of state moneys therein shall apply to the several funds and securities. [2010 c 8 § 14010; 1961 c 23 § 51.44.120. Prior: (i) 1911 c 74 § 26, part; RRS § 7705, part. (ii) 1917 c 28 § 14; RRS § 7723.]

51.44.140 Self-insurer deposits into reserve fund—Accounts within fund—Surpluses and deficits. Each self-insurer shall make such deposits, into the reserve fund, as the department shall require pursuant to RCW 51.44.070, as are necessary to guarantee the payments of the pensions established pursuant to RCW 51.32.050 and 51.32.060.

Each self-insurer shall have an account within the reserve fund. Each such account shall be credited with its proportionate share of interest or other earnings as determined in RCW 51.44.080.

Each such account in the reserve fund shall be expeted by the insurance commissioner as required in RCW 51.44.080. Any surpluses shall be forthwith returned to the respective self-insurers, and each deficit shall forthwith be made good to the reserve fund by the self-insurer. [1972 ex.s. c 43 § 30; 1971 ex.s. c 289 § 58.]

51.44.142 Self-insured employer overpayment reimbursement fund. The self-insured employer overpayment reimbursement fund is created in the custody of the state treasurer. Expenditures from the account may be used only for reimbursing the reserve fund and self-insured employers for benefits overpaid during the pendency of board or court appeals in which the self-insured employer prevails and has not recovered. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2008 c 280 § 4.]

Application—2008 c 280: See note following RCW 51.52.050.

51.44.145 Self-insured insurer program—Administrative costs. Moneys used for administrative costs for one-time projects requested by self-insured employers and that will support the self-insured employer program is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW. However, an appropriation is not required for expendi-

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tures. Administrative costs include, but are not limited to, the salaries and expenses of staff required to implement the one-time projects and travel, goods, and services necessary to conduct these activities. The department must use self-insured employer administrative assessments to cover the costs of these services. The department must seek support from self-insured employers prior to accessing these funds. [2015 c 177 § 2.]

51.44.150 Assessments upon self-insurers for administration costs. The director shall impose and collect assessments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year. These assessments shall also include the assessments for the ombuds's office provided for in RCW 51.14.390. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.05 RCW. [2013 c 23 § 116; 2007 c 281 § 11; 1971 ex.s. c 289 § 59.]

Additional notes found at www.leg.wa.gov

51.44.160 Interfund loans between reserve and supplemental pension funds—Audit. The director is authorized to make periodic temporary interfund transfers between the reserve and supplemental pension funds as may be necessary to provide for payments from the supplemental pension fund as prescribed in this title. At least once annually, the director shall cause an audit to be made of all pension funds administered by the department to insure that proper crediting of funds has been made, and further to direct transfers between the funds for any interfund loans which may have been made in the preceding year and not fully reimbursed. [1975 1st ex.s. c 224 § 17; 1971 ex.s. c 289 § 60.]

Additional notes found at www.leg.wa.gov

51.44.170 Industrial insurance premium refund account. The industrial insurance premium refund account is created in the custody of the state treasurer. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account. Only the executive head of the agency or institution of higher education, or designee, may authorize expenditures from the account. No agency or institution of higher education may make an expenditure from the account for an amount greater than the refund earned by the agency. If the agency or institution of higher education has staff dedicated to workers' compensation claims management, expenditures from the account must be used to pay for that staff, but additional expenditure from the account may be used for any program within an agency or institution of higher education that promotes or provides incentives for employee workplace safety and health and early, appropriate return-to-work for injured employees. During the 2009-2011 fiscal biennium, the legislature may transfer from the industrial insurance premium refund account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 c 5 §

917; 2003 1st sp.s. c 25 § 926; 2002 c 371 § 916; 1997 c 327 § 1; 1991 sp.s. c 13 § 29; 1990 c 204 § 2.]

Effective date—2011 c 5: See note following RCW 43.79.487.

Findings—Purpose—1990 c 204: "The legislature finds that workplace safety in state employment is of paramount importance in maintaining a productive and committed state workforce. The legislature also finds that recognition in state agencies and institutions of higher education of industrial insurance programs that provide safe working environments and promote early return-to-work for injured employees will encourage agencies and institutions of higher education to develop these programs. A purpose of this act is to provide incentives for agencies and institutions of higher education to participate in industrial insurance safety programs and return-to-work programs by authorizing use of the industrial insurance premium refunds earned by agencies or institutions of higher education participating in industrial insurance retrospective rating programs. Since agency and institution of higher education retrospective rating refunds are generated from safety performance and cannot be set at predictable levels determined by the budget process, the incentive awards should not impact an agency's or institution of higher education's legislatively approved budget." [1997 c 327 § 2; 1990 c 204 § 1.]

Additional notes found at www.leg.wa.gov

51.44.180 Stay-at-work program—Administrative expenses—Advisory committee. (1) Moneys used for administrative expenses to assist employers with developing a stay-at-work program and other related services that respond to employer needs or employee needs, or both, in the stay-at-work program as they arise is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW. However, an appropriation is not required for expenditures. Administrative expenses include, but are not limited to, the salaries and expenses of staff required to implement the services and travel, goods, and services necessary to conduct these activities. The department must use stay-at-work program premiums to pay for these services. The department must seek the advice of the workers' compensation advisory committee prior to accessing these funds.

(2) The director must appoint a stay-at-work advisory committee composed of six members: Three representing large and small employers and three representing labor. At least one member of the committee must be a small business owner as defined by RCW 34.05.110(9)(a) or must represent a group primarily made up of small businesses. Appointed members representing employers must have experience working directly with the stay-at-work program. Statewide business and labor organizations, representing large and small employers, must provide the director with recommendations for people to serve on the committee. The department must provide staff support for this committee.

(3) The members must serve three-year terms. Terms of the members representing employers and labor must be staggered such that the director must designate one member from each group initially appointed whose term must expire after one year and one member from each group whose term must expire after two years. The remainder of the initial group must be appointed for three-year terms. Thereafter, members must be appointed for three-year terms.

(4) The members must serve without compensation, but must be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060. All expenses of this committee must be paid by the department.

(5) This committee must review department proposals, submitted by the director, to spend nonappropriated stay-at-work program premiums for administrative expenses as

defined under subsection (1) of this section, and make recommendations to the workers' compensation advisory committee for their consideration. [2015 c 177 § 1.]

Chapter 51.48 RCW PENALTIES

Sections

51.48.010	Employer's liability for penalties, injury or disease occurring before payment of compensation secured.
51.48.017	Self-insurer delaying or refusing to pay benefits.
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51.48.240	Agents and employees of department not personally liable—Conditions.
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51.48.270	Criminal liability of persons making false statements or concealing information.
51.48.280	Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions.
51.48.290	Written verification by health services providers.

51.48.010 Employer's liability for penalties, injury or disease occurring before payment of compensation secured. Every employer shall be liable for the penalties described in this title and may also be liable if an injury or occupational disease has been sustained by a worker prior to the time he or she has secured the payment of such compensation to a penalty in a sum not less than fifty percent nor more than one hundred percent of the cost for such injury or occupational disease. Any employer who has failed to secure

payment of compensation for his or her workers covered under this title may also be liable to a maximum penalty in a sum of five hundred dollars or in a sum double the amount of premiums incurred prior to securing payment of compensation under this title, whichever is greater, for the benefit of the medical aid fund. [1985 c 347 § 2; 1982 c 63 § 20; 1977 ex.s. c 350 § 69; 1971 ex.s. c 289 § 61; 1961 c 23 § 51.48.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Additional notes found at www.leg.wa.gov

51.48.017 Self-insurer delaying or refusing to pay benefits. If a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to five hundred dollars or twenty-five percent of the amount then due, whichever is greater, which shall accrue for the benefit of the claimant and shall be paid to him or her with the benefits which may be assessed under this title. The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits within thirty days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050. [2010 c 8 § 14011; 1985 c 347 § 3; 1971 ex.s. c 289 § 66.]

Additional notes found at www.leg.wa.gov

51.48.020 Employer's false reporting or failure to secure payment of compensation—False information by claimants—Unlawful actions—Penalties. (1)(a) Any employer, who knowingly misrepresents to the department the amount of his or her payroll or employee hours upon which the premium under this title is based, shall be liable to the state for up to ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(b) An employer is guilty of a class C felony, if:

(i) The employer, with intent to evade determination and payment of the correct amount of the premiums, knowingly makes misrepresentations regarding payroll or employee hours; or

(ii) The employer engages in employment covered under this title and, with intent to evade determination and payment of the correct amount of the premiums, knowingly fails to secure payment of compensation under this title or knowingly fails to report the payroll or employee hours related to that employment.

(c) Upon conviction under (b) of this subsection, the employer shall be ordered by the court to pay the premium due and owing, a penalty in the amount of one hundred percent of the premium due and owing, and interest on the premium and penalty from the time the premium was due until the date of payment. The court shall:

(i) Collect the premium and interest and transmit it to the department of labor and industries; and

(ii) Collect the penalty and disburse it pro rata as follows: One-third to the investigative agencies involved; one-third to the prosecuting authority; and one-third to the general fund of the county in which the matter was prosecuted.

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Payments collected under this subsection must be applied until satisfaction of the obligation in the following order: Premium payments; penalty; and interest.

(d) An employer found to have violated this subsection shall, in addition to any other penalties, be subject to the penalties in RCW 39.12.055.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. [2008 c 120 § 9; 1997 c 324 § 1; 1995 c 160 § 4; 1987 c 221 § 1; 1977 ex.s. c 323 § 22; 1971 ex.s. c 289 § 63; 1961 c 23 § 51.48.020. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Additional notes found at www.leg.wa.gov

51.48.022 Failure to secure payment of compensation—Stop work order—Penalty—Rules. (1) In addition to the penalties provided by this chapter, an employer performing services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW who violates RCW 51.14.010 may be subject to a stop work order issued under this section.

(2) If the director determines after an investigation that an employer is in violation of RCW 51.14.010, the director may issue a stop work order against the employer requiring the cessation of business operations of the employer. Service of the order must be in accordance with subsection (3) of this section.

(3) When a stop work order is served on a worksite by posting a copy of the stop work order in a conspicuous location at the worksite, it is effective as to the employer's operations on that worksite. When a stop work order is served on the employer, the order is effective to all employer worksites for which the employer is not in compliance. Business operations of the employer must cease immediately upon service consistent with the stop work order. The order remains in effect until the director issues an order releasing the stop work order upon finding that the employer has come into compliance and has paid any premiums, penalties, and interest under this title or issues an order of conditional release pursuant to subsection (6) of this section.

(4) An employer who violates a stop work order is subject to a one thousand dollar penalty for each day not in compliance.

(5) An employer against whom a stop work order has been issued may request reconsideration from the department or may appeal to the board of industrial insurance appeals. The request must be made in writing to the department or the board within ten days of receiving the stop work order at the worksite or in person. If the department conducts a reconsideration, it must be concluded within ten days of receiving the request for reconsideration by the employer. The stop work order remains in effect during the period of reconsideration or appeal, unless the employer furnishes to the department a cash deposit or bond in the amount of five thousand dollars or one thousand dollars per covered worker identified, whichever is greater. At time of a final order upholding a stop work order, the bond or cash deposit will be seized and applied to

the premium, penalty, and interest balance of that employer. In an appeal before the board, the appellant has the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers.

(6) The director may issue an order of conditional release from the stop work order if the employer has complied with the coverage requirements of this title and agreed to pay premiums, penalties, and interest through a payment schedule. If the terms of the schedule are not met, the stop work order may be reinstated and the unpaid balance will become due.

(7) Stop work orders and penalties assessed under this chapter remain in effect against any successor corporation or business entity that has one or more of the same principals or officers as the employer against whom the stop work order was issued and which is engaged in the same or equivalent trade or activity.

(8) The department may adopt rules to carry out this section. [2009 c 196 § 1.]

51.48.025 Retaliation by employer prohibited—Investigation—Remedies. (1) No employer may discharge or in any manner discriminate against any employee because such employee has filed or communicated to the employer an intent to file a claim for compensation or exercises any rights provided under this title. However, nothing in this section prevents an employer from taking any action against a worker for other reasons including, but not limited to, the worker's failure to observe health or safety standards adopted by the employer, or the frequency or nature of the worker's job-related accidents.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by an employer in violation of this section may file a complaint with the director alleging discrimination within ninety days of the date of the alleged violation. Upon receipt of such complaint, the director shall cause an investigation to be made as the director deems appropriate. Within ninety days of the receipt of a complaint filed under this section, the director shall notify the complainant of his or her determination. If upon such investigation, it is determined that this section has been violated, the director shall bring an action in the superior court of the county in which the violation is alleged to have occurred.

(3) If the director determines that this section has not been violated, the employee may institute the action on his or her own behalf.

(4) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and to order all appropriate relief including rehiring or reinstatement of the employee with back pay. [1985 c 347 § 8.]

51.48.030 Failure to keep records and make reports. Every employer who fails to keep and preserve the records required by this title or fails to make the reports provided in

this title shall be subject to a penalty determined by the director but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each such offense, whichever is greater. Any employer who fails to keep and preserve the records adequate to determine taxes due shall be forever barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department based on any period for which such records have not been kept and preserved. [1986 c 9 § 8; 1985 c 347 § 4; 1982 c 63 § 21; 1971 ex.s. c 289 § 64; 1961 c 23 § 51.48.030. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Additional notes found at www.leg.wa.gov

51.48.040 Inspection of employer's records. (1) The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title.

(2) Refusal on the part of the employer to submit his or her books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense and the individual who personally gives such refusal is guilty of a misdemeanor.

(3) Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection. [2003 c 53 § 282; 1986 c 9 § 9; 1985 c 347 § 5; 1961 c 23 § 51.48.040. Prior: 1911 c 74 § 15, part; RRS § 7690, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.050 Liability for illegal collections for medical aid. It shall be unlawful for any employer to directly or indirectly demand or collect from any of his or her workers any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workers, other than as specified in RCW 51.16.140, and any employer who directly or indirectly violates the foregoing provisions of this section shall be liable to the state for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent, or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor. [1980 c 14 § 13. Prior: 1977 ex.s. c 350 § 70; 1977 ex.s. c 323 § 23; 1961 c 23 § 51.48.050; prior: 1917 c 28 § 17; RRS § 7726.]

Additional notes found at www.leg.wa.gov

51.48.055 Termination, dissolution, or abandonment of business—Personal liability for unpaid premiums. (1) Upon termination, dissolution, or abandonment of a corpo-

rate or limited liability company business, any officer, member, manager, or other person having control or supervision of payment and/or reporting of industrial insurance, or who is charged with the responsibility for the filing of returns, is personally liable for any unpaid premiums and interest and penalties on those premiums if such officer or other person willfully fails to pay or to cause to be paid any premiums due the department under chapter 51.16 RCW.

For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member, manager, or other person is liable only for premiums that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those premiums.

(3) The officer, member, manager, or other person is not liable if that person is not exempt from mandatory coverage under RCW 51.12.020 and was directed not to pay the employer's premiums by someone who is exempt.

(4) The officer, member, manager, or other person is not liable if all of the assets of the corporation or limited liability company have been applied to its debts through bankruptcy or receivership.

(5) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 51.48.131.

(6) This section does not relieve the corporation or limited liability company of its liabilities under Title 51 RCW or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section. [2004 c 243 § 3.]

Additional notes found at www.leg.wa.gov

51.48.060 Physician or licensed advanced registered nurse practitioner—Failure to report or comply. Any physician or licensed advanced registered nurse practitioner who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured worker at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars. [2004 c 65 § 14; 1985 c 347 § 6; 1977 ex.s. c 350 § 71; 1971 ex.s. c 289 § 20; 1961 c 23 § 51.48.060. Prior: 1927 c 310 § 6(e), part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686(e), part.]

Additional notes found at www.leg.wa.gov

51.48.075 Information and training on premium liability. The department shall, working with business associations and other employer and employee groups when practical, publish information and provide training to promote understanding of the premium liability that may be incurred under this chapter. [2004 c 243 § 5.]

Additional notes found at www.leg.wa.gov

(2016 Ed.)

51.48.080 Violation of rules. Every person, firm or corporation who violates or fails to obey, observe or comply with any rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed five hundred dollars. [1985 c 347 § 7; 1961 c 23 § 51.48.080. Prior: 1915 c 188 § 8; RRS § 7704.]

51.48.090 Collection. Civil penalties to the state under this title shall be collected by civil action in the name of the state and paid into the accident fund unless a different fund is designated. [1961 c 23 § 51.48.090. Prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1911 c 74 § 15, part; RRS § 7690, part. (iii) 1917 c 28 § 17, part; RRS § 7726, part.]

51.48.100 Waiver—Penalty-free periods. (1) The director may waive the whole or any part of any penalty charged under this title.

(2) Until June 30, 1986: (a) The director may, at his or her discretion, declare a penalty-free period of no more than three months only for employers who have never previously registered under RCW 51.16.110 for eligible employees under Title 51 RCW; and (b) such employers may qualify once for penalty-free status upon payment of up to one year's past due premium in full and satisfaction of the requirements of RCW 51.16.110. Such employers shall be subject to all penalties for any subsequent failure to comply with the requirements of this title. [1985 c 227 § 1; 1961 c 23 § 51.48.100. Prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part.]

Additional notes found at www.leg.wa.gov

51.48.103 Engaging in business without certificate of coverage—Unlawful actions—Penalties. (1) It is a gross misdemeanor:

(a) For any employer to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title;

(b) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title.

(2) It is a class C felony punishable according to chapter 9A.20 RCW:

(a) For any employer to engage in business subject to this title after the employer's certificate of coverage has been revoked by order of the department;

(b) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title after revocation of a certificate of coverage.

(3) An employer found to have violated this section shall, in addition to any other penalties, be subject to the penalties in RCW 39.12.055. [2008 c 120 § 8; 2003 c 53 § 283; 1986 c 9 § 12.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.105 Failure to apply for coverage of employees—Not applicable, when. The penalties provided under this title for failure to apply for coverage for employees as required by the provisions of Title 51 RCW, the worker's compensation law, shall not be applicable prior to March 1, 1972, as to any employer whose work first became subject to this title on or after January 1, 1972. [1977 ex.s. c 350 § 73; 1972 ex.s. c 78 § 1.]

51.48.110 Decedent having no beneficiaries—Payment into supplemental pension fund. Where death results from the injury or occupational disease and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of ten thousand dollars, less any amount that the self-insurer paid under RCW 51.32.040(2) as payment due for the period of time before the worker's death. [1999 c 185 § 2; 1986 c 56 § 1; 1971 ex.s. c 289 § 65.]

Additional notes found at www.leg.wa.gov

51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents. If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by a method for which receipt can be confirmed or tracked to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries. [2011 c 290 § 7; 1995 c 160 § 5; 1986 c 9 § 10; 1985 c 315 § 6; 1972 ex.s. c 43 § 32.]

51.48.131 Notice of assessment for default in payments by employer—Appeal. A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due.

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

The burden of proof rests upon the employer in an appeal to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The

department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers. [1989 c 175 § 120; 1987 c 316 § 3; 1985 c 315 § 7.]

Additional notes found at www.leg.wa.gov

51.48.140 Notice of assessment for employer's default in payments—When amount becomes final—Warrant—Execution—Garnishment—Fees. If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW 51.48.131 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in RCW 34.05.510 through 34.05.598, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final and the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk. [2001 c 146 § 11; 1989 c 175 § 121; 1985 c 315 § 8; 1972 ex.s. c 43 § 34.]

Additional notes found at www.leg.wa.gov

51.48.150 Notice of assessment for employer's default in payments—Notice to withhold and deliver property due employer. The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the

state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by a method for which receipt can be confirmed or tracked, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [2011 c 290 § 8; 1995 c 160 § 6; 1987 c 442 § 1119; 1986 c 9 § 11; 1972 ex.s. c 43 § 35.]

51.48.160 Revocation of certificate of coverage for failure to pay warrants or taxes. If any warrant issued under this title is not paid within thirty days after it has been filed with the clerk of the superior court, or if any employer is

delinquent, for three consecutive reporting periods, in the transmission to the department of taxes due, the department may, by order issued under its official seal, revoke the certificate of coverage of the employer against whom the warrant was issued; and if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the employer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of coverage be issued to the employer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the department have been entered, and until the taxpayer has deposited with the department such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department may require, but the amount of the security shall not be greater than one-half the estimated average annual taxes of the employer. [1986 c 9 § 13.]

51.48.170 Emergency assessment and collection of taxes. If the director or the director's designee has reason to believe that an employer is insolvent or about to cease business, leave the state, or remove or dissipate assets out of which taxes or penalties might be satisfied, and the collection of any taxes accrued will be jeopardized by delaying collection, the director or the director's designee may make an immediate assessment thereof and may proceed to enforce collection immediately under the terms of RCW 51.48.180 and 51.48.190, but interest and penalties shall not begin to accrue upon any taxes until the date when such taxes would normally have become delinquent. [1986 c 9 § 14.]

51.48.180 Emergency assessment and collection of taxes—Distrain and sale of property. If the amount of taxes, interest, or penalties assessed by the director or the director's designee by order and notice of assessment pursuant to RCW 51.48.170 is not paid within ten days after the service or mailing of the order and notice of assessment, the director or the director's designee may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of the delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1986 c 9 § 15.]

51.48.190 Emergency assessment and collection of taxes—Conduct of sale. The director or the director's designee, upon making a distraint pursuant to RCW 51.48.170 and 51.48.180, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to the owner, and shall specify the time and place when the property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than twenty days from the date of posting of such notices. The sale may be adjourned from time to time at the discretion of the director or the director's designee, but not for a time to exceed in all sixty days. No sale shall take place if an appeal is pending. The sale shall be conducted by the director or the director's

designee who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the director or the director's designee may declare such property to be purchased by the department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the director or the director's designee at public or private sale, and the amount realized shall be placed in the state of Washington industrial insurance fund.

In all cases of sale, as aforesaid, the director or the director's designee shall issue a bill of sale or a deed to the purchaser and the bill of sale or deed shall be prima facie evidence of the right of the director or the director's designee to make such sale and conclusive evidence of the regularity of the proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the director or the director's designee in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent taxes, interest, and penalties the industrial insurance fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the director or the director's designee shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the director or the director's designee by any other taxing authority of the state or its political subdivisions. [1986 c 9 § 16.]

51.48.200 Search and seizure of property to satisfy tax warrant or assessment—Issuance and execution of search warrant. (1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution in the possession or control of any employer against whom a tax warrant issued under RCW 51.48.140 has been filed which remains unsatisfied, or an assessment issued pursuant to RCW 51.48.170, any judge of the superior court or district court in the county in which such property is located may, upon the request of the sheriff or agent of the department authorized to collect taxes, issue a warrant directed to the officers commanding the search for and seizure of the property described in the request for warrant.

(2) The procedure for the issuance, and execution and return of the warrant authorized by this section and for return of any property seized shall be the criminal rules of the superior court and the district court.

(3) The sheriff or agent of the department shall levy execution upon property seized under this section as provided in RCW 51.48.220 and 51.48.230.

(4) This section does not require the application for or issuance of any warrant not otherwise required by law. [1986 c 9 § 17.]

51.48.210 Delinquent taxes. If payment of any tax due is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the tax for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the tax for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the tax for the third month or part thereof of delinquency. No penalty so added may be less than ten dollars. If a warrant is issued by the department for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars nor greater than one hundred dollars. In addition, delinquent taxes shall bear interest at the rate of one percent of the delinquent amount per month or fraction thereof from and after the due date until payment, increases, and penalties are received by the department. [1987 c 111 § 8; 1986 c 9 § 18.]

Additional notes found at www.leg.wa.gov

51.48.220 Order of execution upon property—Procedure—Sale. The department may issue an order of execution, pursuant to a filed warrant, under its official seal directed to the sheriff of the county in which the warrant has been filed, commanding the sheriff to levy upon and sell the real and/or personal property of the taxpayer found within the county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

The sheriff shall be entitled to fees as provided by law for services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee as provided by law, which shall be added to the amount of the warrant.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant. [1986 c 9 § 21.]

51.48.230 Order of execution upon property—Enforcement. In the discretion of the department, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant. [1986 c 9 § 22.]

51.48.240 Agents and employees of department not personally liable—Conditions. When recovery is had in any suit or proceeding against an officer, agent, or employee of the department for any act done by that person or for the recovery of any money exacted by or paid to that person and by that person paid over to the department, in the performance of the person's official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he or she acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [1986 c 9 § 23.]

51.48.250 Liability of persons wilfully obtaining erroneous payments—Civil penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health service, shall, on behalf of himself or herself or others, obtain or attempt to obtain payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A wilful false statement;
- (b) Wilful misrepresentation, or by concealment of any material facts; or
- (c) Other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were not furnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess payments received, plus interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The director of the department of labor and industries may assess civil penalties in an amount not to exceed the greater of one thousand dollars or three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to April 1, 1986.

(3) A criminal action need not be brought against a person, firm, corporation, partnership, association, agency, institution, or other legal entity for that person or entity to be civilly liable under this section.

(4) Civil penalties shall be deposited in the general fund upon their receipt. [2010 c 8 § 14012; 1986 c 200 § 4.]

51.48.260 Liability of persons unintentionally obtaining erroneous payments. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health services, that, without intent to violate this chapter, obtains payments under Title 51 RCW to which such person or entity is not entitled, shall be liable for: (1) Any excess

payments received; and (2) interest on the amount of excess payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. [1986 c 200 § 3.]

51.48.270 Criminal liability of persons making false statements or concealing information. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an injured worker or beneficiary, that:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under this title; or

(2) At any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment; or

(3) Having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he or she has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized;

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1987 c 470 § 2; 1986 c 200 § 5.]

51.48.280 Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions. (1) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(a) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter; or

(b) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(2) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(a) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter; or

(b) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(3) A health services provider who (a) provides a health care service to a claimant, while acting as the claimant's representative for the purpose of obtaining authorization for the services, and (b) charges a percentage of the claimant's benefits or other fee for acting as the claimant's representative under this title is guilty of a gross misdemeanor.

(4) Any fine imposed as a result of a violation of subsection (1), (2), or (3) of this section shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(5) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(6) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [2003 c 53 § 284; 1997 c 336 § 1; 1986 c 200 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.290 Written verification by health services providers. The director of the department of labor and industries may by rule require that any application, statement, or form filled out by any health services provider under this title shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [1986 c 200 § 7.]

Chapter 51.52 RCW APPEALS

Sections

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51.52.010 Board of industrial insurance appeals.

There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician or licensed advanced registered nurse practitioner, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or licensed advanced registered nurse practitioner or until the affected member's term expires, whichever occurs first. Whenever the workload of the board

and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [2004 c 65 § 15; 2003 c 224 § 1; 1999 c 149 § 1; 1981 c 338 § 10; 1977 ex.s. c 350 § 74; 1975-'76 2nd ex.s. c 34 § 151; 1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

Additional notes found at www.leg.wa.gov

51.52.020 Board—Rule-making power. The board may make rules and regulations concerning its functions and procedure, which shall have the force and effect of law until altered, repealed, or set aside by the board: PROVIDED, That the board may not delegate to any other person its duties of interpreting the testimony and making the final decision and order on appeal cases. All rules and regulations adopted by the board shall be printed and copies thereof shall be readily available to the public. [1961 c 23 § 51.52.020. Prior: 1951 c 225 § 2; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.030 Board—Expenses. The board may incur such expenses as are reasonably necessary to carry out its duties hereunder, which expenses shall be paid, one-half from the accident fund and one-half from the medical aid fund upon vouchers approved by the board. [1961 c 23 § 51.52.030. Prior: 1951 c 225 § 3; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.040 Board—Removal of member. Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit the original of such written charges to the chief justice of the supreme court and a copy thereof to the member accused. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review. [1961 c 23 § 51.52.040. Prior: 1951 c 225 § 4; prior: 1949 c 219 § 4; Rem. Supp. 1949 § 10837-3.]

51.52.050 Service of departmental action—Demand for repayment—Orders amending benefits—Reconsideration or appeal. (1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with

a copy thereof by mail, or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address as shown by the records of the department. Correspondence and notices sent electronically are considered received on the date sent by the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW

51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self-insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [2011 c 290 § 9; 2008 c 280 § 1; 2004 c 243 § 8; 1987 c 151 § 1; 1986 c 200 § 10; 1985 c 315 § 9; 1982 c 109 § 4; 1977 ex.s. c 350 § 75; 1975 1st ex.s. c 58 § 1; 1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 § 11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

Application—2008 c 280: "This act applies to orders issued on or after June 12, 2008." [2008 c 280 § 7.]

Additional notes found at www.leg.wa.gov

51.52.060 Notice of appeal—Time—Cross-appeal—Departmental options. (1)(a) Except as otherwise specifically provided in this section, a worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the

day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which a copy of the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

(2) Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties to the appeal of the receipt of the appeal and shall forward a copy of the notice of appeal to the other interested parties. Within twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken.

(3) If within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department directs the submission of further evidence or the investigation of any further fact, the time for filing the notice of appeal shall not commence to run until the person has been advised in writing of the final decision of the department in the matter. In the event the department directs the submission of further evidence or the investigation of any further fact, as provided in this section, the department shall render a final order, decision, or award within ninety days from the date further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days.

(4) The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may:

(a) Modify, reverse, or change any order, decision, or award; or

(b)(i) Except as provided in (b)(ii) of this subsection, hold an order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal; or

(ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

For purposes of this subsection, good cause includes delay that results from conduct of the claimant that is subject to sanction under RCW 51.32.110.

The board shall deny the appeal upon the issuance of an order under (b)(i) or (ii) of this subsection holding an earlier order, decision, or award in abeyance, without prejudice to

the appellant's right to appeal from any subsequent determinative order issued by the department.

This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160.

(5) An employer shall have the right to appeal an application deemed granted under RCW 51.32.160 on the same basis as any other application adjudicated pursuant to that section.

(6) A provision of this section shall not be deemed to change, alter, or modify the practice or procedure of the department for the payment of awards pending appeal. [1995 c 253 § 1; 1995 c 199 § 7; 1986 c 200 § 11; 1977 ex.s. c 350 § 76; 1975 1st ex.s. c 58 § 2; 1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949 c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4, part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem Supp. 1949 §§ 7679, part, 7697, part.]

Reviser's note: This section was amended by 1995 c 199 § 7 and by 1995 c 253 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

51.52.063 After notice of appeal—Contact with medical providers restricted—Rules. (1)(a) Except as provided in (b) through (d) of this subsection, after receipt of the notice of an appeal that has been filed under RCW 51.52.060(2), the employer and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider, unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the employer or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(2)(a) Except as provided in (b) and (c) of this subsection, after receipt of the notice of an appeal under RCW 51.52.060(2), the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the employer pursuant to RCW 51.36.070, unless written authorization for contact is given by the employer or its representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the employer or its representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department, employer, and their representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the employer fails to identify or confirm the examining medical provider as a witness as required by the board.

(3) Subsections (1) and (2) of this section do not apply to the department.

(a) Except as provided in (b) through (d) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the department and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider and has been named as a witness by the worker or their representative unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the department or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(4)(a) Except as provided in (b) and (c) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the department pursuant to RCW 51.36.070, unless written authorization for contact is given by the department or its representatives. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the department or its representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department or its representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the department fails to identify or confirm the examining medical provider as a witness as required by the board.

(5) Upon motion by either party, the industrial appeals judge assigned to the case may determine whether a party has made itself reasonably available to participate in an in-person, telephone, or videoconference communication as provided in subsections (1)(c)(ii), (2)(b)(ii), (3)(c)(ii), and (4)(b)(ii) of this section. If the industrial appeals judge determines that a party has not made itself reasonably available, the judge may determine appropriate remedies including but not limited to setting a date and time for the contact being requested by a party, sanctioning the party who has not reasonably made itself available, or both.

(6) This section only applies to issues set forth in a notice of appeal under RCW 51.52.060(2).

(7) This section does not limit the reporting requirements under RCW 51.04.050 and 51.36.060 for issues not set forth in a notice of appeal.

(8) The department and board may adopt rules as necessary to implement the provisions of this section.

(9) A medical provider who discusses issues on appeal with the department or with any employer or worker or representative of any employer or worker in violation of this section shall not be held liable for such communication. [2009 c 391 § 1.]

Application—2009 c 391: "This act applies to orders entered on or after July 26, 2009." [2009 c 391 § 2.]

51.52.070 Contents of notice—Transmittal of record.

The notice of appeal to the board shall set forth in full detail the grounds upon which the person appealing considers such order, decision, or award is unjust or unlawful, and shall include every issue to be considered by the board, and it must contain a detailed statement of facts upon which such worker, beneficiary, employer, or other person relies in support thereof. The worker, beneficiary, employer, or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in such notice of appeal or appearing in the records of the department. The department shall promptly transmit its original record, or a legible copy thereof produced by mechanical, photographic, or electronic means, in such matter to the board. [1977 ex.s. c 350 § 77; 1975 1st ex.s. c 224 § 18; 1975 1st ex.s. c 58 § 3; 1961 c 23 § 51.52.070. Prior: 1957 c 70 § 57; 1951 c 225 § 7; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Additional notes found at www.leg.wa.gov

51.52.075 Appeal from order terminating provider's authority to provide services—Department petition for order immediately suspending provider's eligibility to participate.

When a provider files with the board an appeal from an order terminating the provider's authority to provide services related to the treatment of industrially injured workers, the department may petition the board for an order immediately suspending the provider's eligibility to participate as a provider of services to industrially injured workers under this title pending the final disposition of the appeal by the board. The board shall grant the petition if it determines that there is good cause to believe that workers covered under this title may suffer serious physical or mental harm if the petition is not granted. The board shall expedite the hearing of the department's petition under this section. [2004 c 259 § 1.]

51.52.080 Appeal to board denied, when. If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal. [1971 ex.s. c 289 § 69; 1963 c 148 § 2; 1961 c 23 § 51.52.080. Prior: 1957 c 70 § 58; 1951 c 225 § 8; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Additional notes found at www.leg.wa.gov

51.52.090 Appeal to board deemed granted, when. If the appeal is not denied within thirty days after the notice is filed with the board, the appeal shall be deemed to have been granted: PROVIDED, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days. [1971 ex.s. c 289 § 70; 1961 c 23 § 51.52.090. Prior: 1957 c 70 § 59; 1951 c 225 § 9; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6,

part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Additional notes found at www.leg.wa.gov

51.52.095 Conference for disposal of matters involved in appeal—Mediation of disputes. (1) The board, upon request of the worker, beneficiary, or employer, or upon its own motion, may direct all parties interested in an appeal, together with their attorneys, if any, to appear before it, a member of the board, or an authorized industrial appeals judge, for a conference for the purpose of determining the feasibility of settlement, the simplification of issues of law and fact, the necessity of amendments to the notice of appeal or other pleadings, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the limitation of the number of expert witnesses, and such other matters as may aid in the disposition of the appeal. Such conference may be held prior to the hearing, or it may be held during the hearing, at the discretion of the board member or industrial appeals judge conducting the same, in which case the hearing will be recessed for such conference. Following the conference, the board member or industrial appeals judge conducting the same, shall state on the record the results of such conference, and the parties present or their representatives shall state their concurrence on the record. Such agreement as stated on the record shall control the subsequent course of the proceedings, unless modified at a subsequent hearing to prevent manifest injustice. If agreement concerning final disposition of the appeal is reached by the parties present at the conference, or by the employer and worker or beneficiary, the board may enter a final decision and order in accordance therewith, providing the board finds such agreement is in conformity with the law and the facts.

(2) In order to carry out subsection (1) of this section, the board shall develop expertise to mediate disputes informally. Where possible, industrial appeals judges with a demonstrated history of successfully resolving disputes or who have received training in dispute resolution techniques shall be appointed to perform mediation functions. No industrial appeals judge who mediates in a particular appeal may, without the consent of the parties, participate in writing the proposed decision and order in the appeal: PROVIDED, That this shall not prevent an industrial appeals judge from issuing a proposed decision and order responsive to a motion for summary disposition or similar motion. This section shall not operate to prevent the board from developing additional methods and procedures to encourage resolution of disputes by agreement or otherwise making efforts to reduce adjudication time. [1986 c 10 § 1; 1985 c 209 § 2; 1982 c 109 § 7; 1977 ex.s. c 350 § 78; 1963 c 148 § 3; 1963 c 6 § 1; 1961 c 23 § 51.52.095. Prior: 1951 c 225 § 10.]

51.52.100 Proceedings before board—Contempt. Hearings shall be held in the county of the residence of the worker or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing shall be de novo and summary, but no witness' testimony shall be received unless he or she shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his or her testimony shall have been taken by deposition according to the statutes and

rules relating to superior courts of this state. The department shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed, the same, with all depositions, shall be filed in, and remain a part of, the record on the appeal. Such hearings on appeal to the board may be conducted by one or more of its members, or a duly authorized industrial appeals judge, and depositions may be taken by a person duly commissioned for the purpose by the board.

Members of the board, its duly authorized industrial appeals judges, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his or her office.

If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the board or any member or duly authorized industrial appeals judge may certify the facts to the superior court having jurisdiction in the place in which said board or member or industrial appeals judge is sitting; the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court. [1982 c 109 § 8; 1977 ex.s. c 350 § 79; 1963 c 148 § 4; 1961 c 23 § 51.52.100. Prior: 1957 c 70 § 60; 1951 c 225 § 11; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.102 Hearing the appeal—Dismissal—Evidence—Continuances. At the time and place fixed for hearing each party shall present all his or her evidence with respect to the issues raised in the notice of appeal, and if any party fails so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing, or if an appealing party who has the burden of going forward with the evidence fails to present any evidence, the board may dismiss the appeal: PROVIDED, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to

interested parties: AND PROVIDED FURTHER, That the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence. [2010 c 8 § 14013; 1963 c 148 § 5; 1961 c 23 § 51.52.102. Prior: 1951 c 225 § 12.]

51.52.104 Industrial appeals judge—Recommended decision and order—Petition for review—Finality of order. After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be an active or judicial member of the Washington state bar association, the industrial appeals judge shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such further time as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's offices in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [2003 c 224 § 2; 1985 c 314 § 1; 1982 c 109 § 5; 1971 ex.s. c 289 § 22; 1963 c 148 § 6.]

Additional notes found at www.leg.wa.gov

51.52.106 Review of decision and order. After the filing of a petition or petitions for review as provided for in RCW 51.52.104, the proposed decision and order of the industrial appeals judge, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial: PROVIDED, That

if a petition for review is not denied within said twenty days it shall be deemed to have been granted. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chair may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall, in all cases, render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his or her attorney of record. [2010 c 8 § 14014; 1982 c 109 § 9; 1975 1st ex.s. c 58 § 4; 1971 ex.s. c 289 § 23; 1965 ex.s. c 165 § 4; 1963 c 148 § 7; 1961 c 23 § 51.52.106. Prior: 1951 c 225 § 13.]

Additional notes found at www.leg.wa.gov

51.52.110 Court appeal—Taking the appeal. Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the appeal is denied as herein provided, such worker, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. If such worker, beneficiary, employer, or other person fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board to deny the petition or petitions for review or the final decision and order of the board shall become final.

In cases involving injured workers, an appeal to the superior court shall be to the superior court of the county of residence of the worker or beneficiary, as shown by the department's records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred are in the state of Washington then the appeal may be directed to the superior court for Thurston county. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer. The department shall, in all cases not involving a self-insurer, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. If the case is one involving a self-insurer, such self-insurer shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed to be at issue. In such cases the department may appear and take part in any proceedings. The board shall serve upon the appealing party, the director, the self-insurer if the case

involves a self-insurer, and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on review by the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under *RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: PROVIDED, HOWEVER, That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court. [1988 c 202 § 49; 1982 c 109 § 6; 1977 ex.s. c 350 § 80; 1973 c 40 § 1. Prior: 1972 ex.s. c 50 § 1; 1972 ex.s. c 43 § 36; 1971 ex.s. c 289 § 24; 1971 c 81 § 122; 1961 c 23 § 51.52.110; prior: 1957 c 70 § 61; 1951 c 225 § 14; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: Cf. Title 8 RAP, RAP 18.22.

*Reviser's note: RCW 51.48.070 was repealed by 1996 c 60 § 2.

Additional notes found at www.leg.wa.gov

51.52.112 Court appeal—Payment of taxes, penalties, and interest required. All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest unless the court determines that there would be an undue hardship to the employer. In the event an employer prevails in a court action, the employer shall be allowed interest on all taxes, penalties, and interest paid by the employer but determined by a final order of the court to not be due, from the date such taxes, penalties, and interest were paid. Interest shall be at the rate allowed by law as prejudgment interest. [1986 c 9 § 19.]

51.52.113 Collection of tax or penalty may not be enjoined. No restraining order or injunction may be granted or issued by any court to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1986 c 9 § 20.]

51.52.115 Court appeal—Procedure at trial—Burden of proof. Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every

such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: PROVIDED, That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court. [1961 c 23 § 51.52.115. Prior: 1957 c 70 § 62; 1951 c 225 § 15; prior: (i) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (ii) 1949 c 219 § 6; 1939 c 184 § 1; Rem. Supp. 1949 § 7697-2.]

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (1) Except for claim resolution structured settlement agreements, it shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) For claim resolution structured settlement agreements, fees for attorney services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution structured settlement agreements consistent with the procedures in subsection (2) of this section.

(4) In an appeal to the board involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185.

(5) Any person who violates this section is guilty of a misdemeanor. [2011 1st sp.s. c 37 § 304; 2007 c 490 § 3; 2003 c 53 § 285; 1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

51.52.130 Attorney and witness fees in court appeal.

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185. [2007 c 490 § 4; 1993 c 122 § 1; 1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280

§ 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Additional notes found at www.leg.wa.gov

51.52.132 Unlawful attorney's fees. Where the department, the board or the court, pursuant to RCW 51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee in excess of that fixed by the department, board or the court. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1965 ex.s. c 63 § 2; 1961 c 23 § 51.52.132. Prior: 1951 c 225 § 18.]

51.52.135 Worker or beneficiary entitled to interest on award—Rate. (1) When a worker or beneficiary prevails in an appeal by the employer to the board or in an appeal by the employer to the court from the decision and order of the board, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(2) When a worker or beneficiary prevails in an appeal by the worker or beneficiary to the board or the court regarding a claim for temporary total disability, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(3) The interest provided for in subsections (1) and (2) of this section shall accrue from the date of the department's order granting the award or denying payment of the award. The interest shall be paid by the party having the obligation to pay the award. The amount of interest to be paid shall be fixed by the board or court, as the case may be. [1983 c 301 § 1.]

51.52.140 Rules of practice—Duties of attorney general—Supreme court appeal. Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board. [1961 c 23 § 51.52.140. Prior: 1957 c 70 § 64; 1951 c 225 § 19; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: *Method of appellate review superseded by RAP 2.1, 2.2.*

51.52.150 Costs on appeals. All expenses and costs incurred by the department for board and court appeals, including fees for medical and other witnesses, court reporter costs and attorney's fees, and all costs taxed against the department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund. [1961 c 23 § 51.52.150. Prior: 1951 c 225 § 20; prior: 1931 c 116 § 1; RRS § 7697-1.]

51.52.160 Publication and indexing of significant decisions. The board shall publish and index its significant decisions and make them available to the public at reasonable cost. [1985 c 209 § 1.]

51.52.200 Exception—Employers as parties to actions relating to compensation or assistance for victims of crimes. This chapter shall not apply to matters concerning employers as parties to any settlement, appeal, or other action in accordance with chapter 7.68 RCW. [1997 c 102 § 2.]

51.52.800 Workers' compensation study. (1) The department shall study appeals of workers' compensation cases and collect information on the impacts of chapter 280, Laws of 2008 on state fund and self-insured workers and employers. The study shall consider the types of benefits that may be paid pending an appeal, and shall include, but not be limited to:

- (a) The frequency and outcomes of appeals;
- (b) The duration of appeals and any procedural or process changes made by the board to implement chapter 280, Laws of 2008 and expedite the process;
- (c) The number of and amount of overpayments resulting from decisions of the board or court; and
- (d) The processes used and efforts made to recoup overpayments and the results of those efforts.

(2) State fund and self-insured employers shall provide the information requested by the department to conduct the study.

(3) The department shall report to the workers' compensation advisory committee by July 1, 2009, on the preliminary results of the study. By December 1, 2009, and annually thereafter, with the final report due by December 1, 2011, the department shall report to the workers' compensation advisory committee and the appropriate committees of the legislature on the results of the study. The workers' compensation advisory committee shall provide its recommendations for addressing overpayments resulting from chapter 280, Laws of 2008, including the need for and ability to fund a permanent method to reimburse employer and state fund overpayment costs. [2008 c 280 § 5.]

Application—2008 c 280: See note following RCW 51.52.050.

Chapter 51.98 RCW CONSTRUCTION

Sections

51.98.010	Continuation of existing law.
51.98.020	Title, chapter, section headings not part of law.
51.98.030	Invalidity of part of title not to affect remainder.
51.98.040	Repeals and saving.
51.98.050	Emergency—1961 c 23.
51.98.060	Effective dates—1971 ex.s. c 289.
51.98.070	Severability—1971 ex.s. c 289.

Additional notes found at www.leg.wa.gov

51.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 23 § 51.98.010.]

51.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 23 § 51.98.020.]

(2016 Ed.)

51.98.030 Invalidation of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1961 c 23 § 51.98.030.]

51.98.040 Repeals and saving. See 1961 c 23 § 51.98.040.

51.98.050 Emergency—1961 c 23. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 23 § 51.98.050.]

51.98.060 Effective dates—1971 ex.s. c 289. The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1971: PROVIDED, That RCW 51.08.070 as amended by section 1 of this 1971 amendatory act, RCW 51.12.010 as amended in section 2 of this 1971 amendatory act, RCW 51.12.020 as amended in section 3 of this 1971 amendatory act and RCW 51.16.110 as amended in section 4 of this 1971 amendatory act shall take effect and become operative without any further action of the legislature on January 1, 1972. [1971 ex.s. c 289 § 90.]

51.98.070 Severability—1971 ex.s. c 289. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1971 ex.s. c 289 § 91.]

