

maintaining a clear distinction between classified and exempt positions. Section 3, in part, is therefore vetoed.

With the exception of the part of Section 3 which I have vetoed, Engrossed House Bill No. 116 is approved.\*

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## CHAPTER 462

[Engrossed Substitute House Bill No. 435]

### LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS—DISABILITY LEAVE SUPPLEMENT FOR TEMPORARY TOTAL DISABILITY

AN ACT Relating to county, municipal, and political subdivision employees; amending RCW 51.32.090; adding new sections to chapter 41.04 RCW; creating new sections; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. A new section is added to chapter 41.04 RCW to read as follows:

County, municipal, and political subdivision employers of full-time, commissioned law enforcement officers and full-time, paid fire fighters shall provide a disability leave supplement to such employees who qualify for payments under RCW 51.32.090 due to a temporary total disability.

**\*NEW SECTION.** Sec. 2. A new section is added to chapter 41.04 RCW to read as follows:

The disability leave supplement shall be an amount which, when added to the amount payable under RCW 51.32.090 will result in the employee receiving the same pay he or she would have received for full time active service, taking into account that industrial insurance payments are not subject to federal income or social security taxes , *as would have been received for full time active service* .

\*Sec. 2 was partially vetoed, see message at end of chapter.

**NEW SECTION.** Sec. 3. A new section is added to chapter 41.04 RCW to read as follows:

The disability leave supplement shall be paid as follows:

(1) The disability leave supplement shall begin on the sixth day of absence from work caused by the injury or illness which entitles the employee to benefits under RCW 51.32.090.

(2) One-half of the amount of the supplement as defined in section 2 of this act shall be charged against the accrued paid leave of the employee. In computing such charge, the employer shall convert accumulated days, or other time units as the case may be, to a money equivalent based on the base monthly salary of the employee at the time of the injury or illness. "Base monthly salary" for the purposes of this section means the amount earned by the employee before any voluntary or involuntary payroll deductions, and not including overtime pay.

(3) One-half of the amount of the supplement as defined in section 2 of this act shall be paid by the employer.

If an employee has no accrued paid leave at the time of an injury or illness which entitles him to benefits under RCW 51.32.090, or if accrued paid leave is exhausted during the period of disability, the employee shall receive only that portion of the disability leave supplement prescribed by subsection (3) of this section.

**NEW SECTION.** Sec. 4. A new section is added to chapter 41.04 RCW to read as follows:

The disability leave supplement provided by sections 1 through 5, 7, and 8 of this act shall continue as long as the employee is receiving benefits under RCW 51.32.090, up to a maximum of six months from the date of the injury or illness.

**NEW SECTION.** Sec. 5. A new section is added to chapter 41.04 RCW to read as follows:

While an employee is receiving disability leave supplement, the employee, subject to the approval of his or her treating physician, shall perform light duty tasks in the employee's previous department as the employer may require, with no reduction in the disability leave supplement.

Sec. 6. Section 51.32.090, chapter 23, Laws of 1961 as last amended by section 1, chapter 129, Laws of 1980 and RCW 51.32.090 are each amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in ((subdivisions)) subsections (1) through (13) of RCW 51.32.060 as amended 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) 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 continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent. However, during the period a worker returns to light-duty work, receives disability leave supplement payments pursuant to sections 1 through 5, 7, and 8 of this 1985 act, and is otherwise eligible for compensation under this section, the worker shall continue to receive such compensation at the rate provided under RCW 51.32.060 (1) through (13).

(4) Whenever an employer requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as

able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. If the worker is released by his or her physician for said work, and the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work, 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 he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

Once the worker returns to work under the terms of this subsection, 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.

In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) 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.

(6) 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. This limitation does not apply to disability leave supplement payments made pursuant to sections 1 through 5, 7, and 8 of this 1985 act.

**\*NEW SECTION.** Sec. 7. A new section is added to chapter 41.04 RCW to read as follows:

***(1) The employee shall continue to receive all benefits that are fully funded by the employer and are provided to active employees by the employer for the period of time the employee is eligible for disability leave supplement.***

(2) The disability leave supplement provided in section 3(3) of this act shall not be considered salary or wages for personal services: PROVIDED, That the employee shall also continue to receive all insurance benefits provided in whole or in part by the employer, notwithstanding the fact that

some portion of the cost of those benefits is paid by the employee: PROVIDED FURTHER, That the portion of the cost not paid by the employer continues to be paid by the employee.

\*Sec. 7 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 8. A new section is added to chapter 41.04 RCW to read as follows:

If an employee's accrued sick leave is exhausted during the period of disability, the employee may, for a period of two months following return to active service, draw prospectively upon sick leave the employee is expected to accumulate up to a maximum of three days or three work shifts, whichever is greater. Any sick leave drawn prospectively as provided in this section shall be charged against earned sick leave until such time as the employee has accrued the amount needed to restore the amount used. In the event an employee terminates active service without having restored the sick leave drawn prospectively, the employer shall deduct the actual cost of any payments made under this section from compensation or other money payable to the employee, or otherwise recover such payments.

NEW SECTION. Sec. 9. This act shall expire June 30, 1989.

NEW SECTION. Sec. 10. The legislative budget committee shall cause to be conducted a program and fiscal review of the program established by sections 1 through 5, 7, and 8 of this act. The review shall be conducted on or before June 30, 1987. In conducting the review, the legislative budget committee shall consider, but not be limited to, the following issues:

- (1) The fiscal impact of the program on local governmental entities;
- (2) The number of claims made and allowed, and duration of claims allowed, for disability leave supplement pursuant to sections 1 through 5, 7, and 8 of this act;
- (3) The number of claimants for disability leave supplement under sections 1 through 5, 7, and 8 of this act who have not returned to active service within six months from the injury or illness causing disability;
- (4) The number of local governmental entities who have entered into agreements with law enforcement officers and fire fighters which establish benefits which are greater than those prescribed by sections 1 through 5, 7, and 8 of this act, and the number of employees covered by such agreements.

NEW SECTION. Sec. 11. A new section is added to chapter 41.04 RCW to read as follows:

Nothing in sections 1 through 5, 7, and 8 of this act shall preclude employers of law enforcement officers and fire fighters and such employees from entering into agreements which provide benefits to employees which are greater than those prescribed by sections 1 through 5, 7, and 8 of this act, nor is there any intent by the legislature to alter or in any way affect any such agreements which may now exist.

NEW SECTION. Sec. 12. A new section is added to chapter 41.04 RCW to read as follows:

Cities and towns with a population of less than twenty-five hundred and counties with a population of less than ten thousand shall not be required to provide a disability leave supplement to their commissioned law enforcement officers and full-time paid fire fighters who qualify for payments pursuant to RCW 51.32.090, due to temporary total disability.

NEW SECTION. Sec. 13. A new section is added to chapter 41.04 RCW to read as follows:

This act neither grants employees a vested right to receive a disability leave supplement nor creates a contractual obligation on behalf of the state or its political subdivisions to provide a disability leave supplement.

NEW SECTION. Sec. 14. A new section is added to chapter 41.04 RCW to read as follows:

Disability leave supplement payments for employees covered by this act shall not be subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905.

Passed the House April 22, 1985.

Passed the Senate April 16, 1985.

Approved by the Governor May 21, 1985, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 21, 1985.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to two sections, Engrossed Substitute House Bill No. 435, entitled:

"AN ACT Relating to county, municipal and political subdivision employees."

The last portion of Section 2 after the word "taxes" is vetoed. This language makes no sense and appears to be a drafting error which only confuses the meaning of this section.

Section 7(1) provides that employees would continue to receive all other benefits given active employees. This language could include such things as uniform allowances, shift differential, shooting pay, sick and vacation leave accruals, and other compensation normally given only to working employees. The section attempted to parallel the LEOFF I program, hence my veto.

The balance of the bill is approved. It provides a needed benefit to a group of employees generally acknowledged by the public as subject to unusual duty related injuries. The cost appears not to be substantial.

I do not support the piecemeal or total readoption of the LEOFF I system for LEOFF II employees. This bill standardizes a practice similar to one voluntarily adopted by a number of counties and cities.

With the exceptions of Section 2 in part and Section 7(1), the remainder of Engrossed Substitute House Bill No. 435 is approved."