

# SENATE BILL REPORT

## ESSB 5368

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As Passed Senate, February 1, 2024

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

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

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, King, Conway, Schoesler, Randall, Torres and Wilson, C.).

**Brief History:**

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

**Floor Activity:** Passed Senate: 2/1/24, 44-4.

**Brief Summary of Engrossed First Substitute Bill**

- Allows an employer with 100 or fewer employees to offer light duty or transitional work to a worker with certain nonprofit organizations or charities under the Stay-at-Work Program and to seek reimbursement for certain wages paid the worker and expenditures subject to certain conditions.
- Requires the Department of Labor and Industries to develop criteria in rule for a return-to-work employment agency to receive approval.

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### SENATE COMMITTEE ON LABOR & COMMERCE

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

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

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass.

Signed by Senators Conway, Vice Chair; Schoesler.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Stanford.

**Staff:** Susan Jones (786-7404)

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

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

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

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

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

Once the worker returns to work under the Stay-at-Work Program, the worker may not be assigned by the employer to work other than the available work described without that attending provider. An employer who directs a claimant to perform work other than that approved by the attending provider and without the approval of the worker's attending provider may not receive any wage subsidy or other reimbursements for such work.

If the worker returns to work under this program, any employee health and welfare benefits that the worker was receiving at the time of injury must continue or be resumed at the level

provided at the time of injury. These benefits may not be continued or resumed if inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

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

**Summary of Engrossed First Substitute Bill: Request and Offer of Light Duty or Transitional Work.** When an employer requests a worker, who is entitled to temporary total disability, be certified as able to perform work that is other than the worker's usual work, the request must include a writing job description of the light duty or transitional work with the employer or a nonprofit organization or charity. The copy provided to the worker must be provided to the worker contemporaneously when it is provided the attending provider and it must be in the worker's preferred language. If more than 21 calendar days have passed since the attending provider's last appointment with the worker, the attending provider may meet with the worker to determine whether the worker is able to perform the work. The attending provider's determination must be shared with the worker and employer.

The worker must accept or decline the light duty job offer within seven days after receiving approval by the attending provider or the temporary total disability benefits will be terminated. There are exceptions.

Stay-at-Work/Return-to-Work with Nonprofit or Charity. Under the Stay-at-Work/Return-to-Work Program, an employer with 100 or fewer employees may offer light duty return to work to a worker with an established nonprofit organization or charity under the following conditions:

- the employer may not disclose the worker's medical restrictions with the nonprofit or charity without the worker's written consent and if consent is not given, the work must be with the employer;
- the employer remains accountable for all reporting requirements and responsible for any new injury or occupational disease incurred on the light duty return to work;
- offers must include a written notice in the worker's preferred language that they have a right to reject a specific light duty job with a specific nonprofit;
- the injured worker does not forfeit any workers' compensation protections or benefits, and the injured worker may reject or terminate the work with the nonprofit or charity and the temporary total disability payments must continue or resume;
- the offer of work with the nonprofit or charity is subject to the same parameters and conditions as an offer of work with the employer; and
- the worker's experience gained through work with the nonprofit organization or charity may not be construed as an acquisition of transferable skills and does not disqualify the injured worker from accessing vocational rehabilitation services or other retraining programs.

To offer work with a nonprofit or charity, the employer must contract with a return-to-work

employment agency approved by L&I or work with a nonprofit or charity listed as active on a Secretary of State website. L&I must develop approval criteria in rule for a return-to-work employment agency.

Research, Study, and Report. L&I must work with the Vocational Rehabilitation Advisory Committee to research and report on meaningful return-to-work outcomes and the benefits on workers' mental health. The committee must study the quality of the work and benefits to the worker of transitional return to work with nonprofits and make recommendations for improving outcomes. The report must be submitted to the Workers' Compensation Advisory Committee by October 31, 2029, for consideration of additional legislation.

Legislative intent is provided.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

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

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

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

options are valuable.

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

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

OTHER: Tammy Fellin, Labor & Industries.

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