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HOUSE BILL 1464

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Manweller and Condotta

1 AN ACT Relating to simplifying and adding certainty to the  
2 calculation of workers' compensation benefits; amending RCW 51.32.050  
3 51.32.060, and 51.32.090; adding a new section to chapter 51.08 RCW;  
4 repealing RCW 51.08.178; providing an effective date; and declaring an  
5 emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08 RCW  
8 to read as follows:

9 (1) If a worker is injured in an employment that both the worker  
10 and the particular employer intend to be permanent and lasting into the  
11 foreseeable future, the worker's monthly wage shall be determined by  
12 dividing by twelve the total wages earned from the particular  
13 employment and any other concurrent employment, including cash bonuses  
14 and overtime, in the twelve months immediately preceding the date of  
15 injury or manifestation of occupational disease. If the worker has  
16 worked less than twelve months for the particular employer in whose  
17 employment the worker was injured or manifested the occupational  
18 disease, the monthly wage shall be based on the total wages earned by

1 the worker in the employment, divided by the total number of months the  
2 worker actually worked in the employment.

3 (2) If a worker is injured in an employment that either the worker  
4 or the particular employer intends to be temporary and not lasting into  
5 the foreseeable future, the worker's monthly wage shall be determined  
6 by dividing by twelve the total wages earned from all employment,  
7 including cash bonuses and overtime, in the twelve months immediately  
8 preceding the date of injury or manifestation of occupational disease.

9 (3) "Wages" means the gross monetary remuneration for services  
10 performed with respect to a pay period, paid in cash, by check, by  
11 electronic transfer, or by other means directly to the worker or to an  
12 account designated by the worker. Wages shall include the actual value  
13 of board, housing, and fuel received from the employer as part of the  
14 contract for hire. Tips shall be included to the extent that such are  
15 reported to the employer for federal income tax purposes. Wages shall  
16 not include health and welfare benefits, savings matching programs, or  
17 fringe benefits including, but not limited to, retirement and financial  
18 benefit plans of whatever nature; life, disability, and wage-  
19 replacement insurance of whatever nature; unused accrued leave of  
20 whatever nature; memberships of any kind; employee discounts or use or  
21 consumption of employer services, material, equipment, and facilities  
22 of whatever nature; training and education of whatever nature; and  
23 other employee or beneficiary benefit plan for the employee's or  
24 beneficiaries' benefit resulting from the employment relationship.

25 **Sec. 2.** RCW 51.32.050 and 2010 c 261 s 3 are each amended to read  
26 as follows:

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

30 (2)(a)(i) For claims with date of injury or manifestation of  
31 occupational disease before July 1, 2013, where death results from the  
32 injury, a surviving spouse of a deceased worker eligible for benefits  
33 under this title shall receive monthly for life or until remarriage  
34 payments according to the following schedule:

35 ~~((+i))~~ (A) If there are no children of the deceased worker, sixty  
36 percent of the wages of the deceased worker;

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

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

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

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

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

16       (ii) For claims with date of injury or manifestation of  
17 occupational disease on or after July 1, 2013, where death results from  
18 the injury, a surviving spouse of a deceased worker eligible for  
19 benefits under this title shall receive monthly for life or until  
20 remarriage payments of sixty-six and two-thirds percent of the wages of  
21 the deceased worker.

22       (b) Where the surviving spouse does not have legal custody of any  
23 child or children of the deceased worker or where after the death of  
24 the worker legal custody of such child or children passes from such  
25 surviving spouse to another, any payment on account of such child or  
26 children not in the legal custody of the surviving spouse shall be made  
27 to the person or persons having legal custody of such child or  
28 children. The amount of such payments shall be five percent of the  
29 monthly benefits payable as a result of the worker's death for each  
30 such child but such payments shall not exceed twenty-five percent.  
31 Such payments on account of such child or children shall be subtracted  
32 from the amount to which such surviving spouse would have been entitled  
33 had such surviving spouse had legal custody of all of the children and  
34 the surviving spouse shall receive the remainder after such payments on  
35 account of such child or children have been subtracted. Such payments  
36 on account of a child or children not in the legal custody of such  
37 surviving spouse shall be apportioned equally among such children.

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

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

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

	AFTER	PERCENTAGE
22	June 30, 1993	105%
23	June 30, 1994	110%
24	June 30, 1995	115%
25	June 30, 1996	120%
26	<u>June 30, 2013</u>	<u>100%</u>

27 (ii) For dates of injury or disease manifestation after July 1,  
 28 2008, be less than fifteen percent of the average monthly wage in the  
 29 state as computed under RCW 51.08.018 plus an additional ten dollars  
 30 per month for a surviving spouse and an additional ten dollars per  
 31 month for each child of the worker up to a maximum of five children.  
 32 However, if the monthly payment computed under this subsection  
 33 (2)(d)(ii) is greater than one hundred percent of the wages of the  
 34 deceased worker as determined under (~~RCW 51.08.178~~) section 1 of this

1 act, the monthly payment due to the surviving spouse shall be equal to  
2 the greater of the monthly wages of the deceased worker or the minimum  
3 benefit set forth in this section on June 30, 2008.

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

12 (f) Upon remarriage of a surviving spouse the monthly payments for  
13 the child or children shall continue as provided in this section, but  
14 the monthly payments to such surviving spouse shall cease at the end of  
15 the month during which remarriage occurs. However, after September 8,  
16 1975, an otherwise eligible surviving spouse of a worker who died at  
17 any time prior to or after September 8, 1975, shall have an option of:

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

27 (B) If a surviving spouse is the surviving spouse of a member of  
28 the law enforcement officers' and firefighters' retirement system under  
29 chapter 41.26 RCW or the state patrol retirement system under chapter  
30 43.43 RCW, the surviving spouse may receive a lump sum of thirty-six  
31 times the monthly compensation rate in effect on the date of remarriage  
32 allocable to the spouse for himself or herself pursuant to subsection  
33 (2)(a)(i)(A) of this section and RCW 51.32.075(3) or fifty percent of  
34 the remaining annuity value of his or her pension provided under this  
35 chapter, whichever is the lesser: PROVIDED, That if the injury  
36 occurred prior to July 28, 1991, the lump sum benefit shall be as  
37 provided in the remarriage benefit schedules then in effect; or

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

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

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

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

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

	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%
6	<u>June 30, 2013</u>	<u>100%</u>

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

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

	AFTER	PERCENTAGE
19		
20	June 30, 1993	105%
21	June 30, 1994	110%
22	June 30, 1995	115%
23	June 30, 1996	120%
24	<u>June 30, 2013</u>	<u>100%</u>

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

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

10 (7) For claims filed on or after July 1, 1986, every worker who  
11 becomes eligible for permanent total disability benefits shall elect an  
12 option as provided in RCW 51.32.067.

13 **Sec. 3.** RCW 51.32.060 and 2007 c 284 s 2 are each amended to read  
14 as follows:

15 (1) Except as provided in subsection (2) of this section, when the  
16 supervisor of industrial insurance shall determine that permanent total  
17 disability results from the injury, the worker shall receive monthly  
18 during the period of such disability:

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

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

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

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

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

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

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

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

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



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

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

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

7 (2) For any claim with date of injury or manifestation of  
8 occupational disease on or after July 1, 2013, when the supervisor of  
9 industrial insurance determines that permanent total disability results  
10 from the injury, the worker shall receive monthly during the period of  
11 such disability sixty-six and two-thirds percent of his or her wages as  
12 determined under section 1 of this act, but not less than two hundred  
13 seventy-six dollars per month.

14 (3) For any period of time where both husband and wife are entitled  
15 to compensation as temporarily or totally disabled workers, only that  
16 spouse having the higher wages of the two shall be entitled to claim  
17 their child or children for compensation purposes under subsection (1)  
18 of this section.

19 ((+3)) (4) In case of permanent total disability, if the character  
20 of the injury is such as to render the worker so physically helpless as  
21 to require the hiring of the services of an attendant, the department  
22 shall make monthly payments to such attendant for such services as long  
23 as such requirement continues, but such payments shall not obtain or be  
24 operative while the worker is receiving care under or pursuant to the  
25 provisions of chapter 51.36 RCW and RCW 51.04.105.

26 ((+4)) (5) Should any further accident result in the permanent  
27 total disability of an injured worker, he or she shall receive the  
28 pension to which he or she would be entitled, notwithstanding the  
29 payment of a lump sum for his or her prior injury.

30 ((+5)) (6) In no event shall the monthly payments provided in this  
31 section:

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

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

1	June 30, 1995	115%
2	June 30, 1996	120%
3	<u>June 30, 2013</u>	<u>100%</u>

4 (b) For dates of injury or disease manifestation after July 1,  
5 2008, but before June 30, 2013, be less than fifteen percent of the  
6 average monthly wage in the state as computed under RCW 51.08.018 plus  
7 an additional ten dollars per month if a worker is married and an  
8 additional ten dollars per month for each child of the worker up to a  
9 maximum of five children. However, if the monthly payment computed  
10 under this subsection ~~((+5))~~ (6)(b) is greater than one hundred  
11 percent of the wages of the worker as determined under ~~((RCW~~  
12 ~~51.08.178))~~ section 1 of this act, the monthly payment due to the  
13 worker shall be equal to the greater of the monthly wages of the worker  
14 or the minimum benefit set forth in this section on June 30, 2008.

15 The limitations under this subsection shall not apply to the  
16 payments provided for in subsection ~~((+3))~~ (4) of this section.

17 ~~((+6))~~ (7) In the case of new or reopened claims, if the  
18 supervisor of industrial insurance determines that, at the time of  
19 filing or reopening, the worker is voluntarily retired and is no longer  
20 attached to the workforce, benefits shall not be paid under this  
21 section.

22 ~~((+7))~~ (8) The benefits provided by this section are subject to  
23 modification under RCW 51.32.067.

24 **Sec. 4.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each  
25 amended to read as follows:

26 (1) When the total disability is only temporary, the schedule of  
27 payments contained in RCW 51.32.060 (1) and ~~((+2))~~ (3) shall apply, so  
28 long as the total disability continues.

29 (2) Any compensation payable under this section for children not in  
30 the custody of the injured worker as of the date of injury shall be  
31 payable only to such person as actually is providing the support for  
32 such child or children pursuant to the order of a court of record  
33 providing for support of such child or children. This subsection does  
34 not apply to claims filed on or after July 1, 2013.

35 (3)(a) As soon as recovery is so complete that the present earning  
36 power of the worker, at any kind of work, is restored to that existing

1 at the time of the occurrence of the injury, the payments shall cease.  
2 If and so long as the present earning power is only partially restored  
3 and the worker is working, the payments shall:

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

7 (ii) For claims for injuries occurring on or after May 7, 1993,  
8 equal eighty percent of the actual difference between the worker's  
9 present wages and earning power at the time of injury, but: (A) The  
10 total of these payments and the worker's present wages may not exceed  
11 one hundred fifty percent of the average monthly wage in the state as  
12 computed under RCW 51.08.018; (B) the payments may not exceed one  
13 hundred percent of the entitlement as computed under subsection (1) of  
14 this section; and (C) the payments may not be less than the worker  
15 would have received if (a)(i) of this subsection had been applicable to  
16 the worker's claim.

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

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

22 (d) The injured worker remains eligible for the benefits provided  
23 in this subsection only until the injured worker's condition is  
24 medically fixed and stable.

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

31 (b) Whenever the employer of injury requests that a worker who is  
32 entitled to temporary total disability under this chapter be certified  
33 by a physician or licensed advanced registered nurse practitioner as  
34 able to perform available work other than his or her usual work, the  
35 employer shall furnish to the physician or licensed advanced registered  
36 nurse practitioner, with a copy to the worker, a statement describing  
37 the work available with the employer of injury in terms that will  
38 enable the physician or licensed advanced registered nurse practitioner

1 to relate the physical activities of the job to the worker's  
2 disability. The physician or licensed advanced registered nurse  
3 practitioner shall then determine whether the worker is physically able  
4 to perform the work described. The worker's temporary total disability  
5 payments shall continue until the worker is released by his or her  
6 physician or licensed advanced registered nurse practitioner for the  
7 work, and begins the work with the employer of injury. If the work  
8 thereafter comes to an end before the worker's recovery is sufficient  
9 in the judgment of his or her physician or licensed advanced registered  
10 nurse practitioner to permit him or her to return to his or her usual  
11 job, or to perform other available work offered by the employer of  
12 injury, the worker's temporary total disability payments shall be  
13 resumed. Should the available work described, once undertaken by the  
14 worker, impede his or her recovery to the extent that in the judgment  
15 of his or her physician or licensed advanced registered nurse  
16 practitioner he or she should not continue to work, the worker's  
17 temporary total disability payments shall be resumed when the worker  
18 ceases such work.

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

36 (d) If an employer insured with the department offers a worker work  
37 pursuant to this subsection (4) and the worker must be provided with  
38 training or instruction to be qualified to perform the offered work,

1 the employer shall be eligible for a reimbursement from the department  
2 for any tuition, books, fees, and materials required for that training  
3 or instruction, up to a maximum of one thousand dollars. Reimbursing  
4 an employer for the costs of such training or instruction does not  
5 constitute a determination by the department that the worker is  
6 eligible for vocational services authorized by RCW 51.32.095 and  
7 51.32.099.

8 (e) If an employer insured with the department offers a worker work  
9 pursuant to this subsection (4), and the employer provides the worker  
10 with clothing that is necessary to allow the worker to perform the  
11 offered work, the employer shall be eligible for reimbursement for such  
12 clothing from the department, up to a maximum of four hundred dollars.  
13 However, an employer shall not receive reimbursement for any clothing  
14 it provided to the worker that it normally provides to its workers.  
15 The clothing purchased for the worker shall become the worker's  
16 property once the work comes to an end.

17 (f) If an employer insured with the department offers a worker work  
18 pursuant to this subsection (4) and the worker must be provided with  
19 tools or equipment to perform the offered work, the employer shall be  
20 eligible for a reimbursement from the department for such tools and  
21 equipment and related costs as determined by department rule, up to a  
22 maximum of two thousand five hundred dollars. An employer shall not be  
23 reimbursed for any tools or equipment purchased prior to offering the  
24 work to the worker pursuant to this subsection (4). An employer shall  
25 not be reimbursed for any tools or equipment that it normally provides  
26 to its workers. The tools and equipment shall be the property of the  
27 employer.

28 (g) An employer may offer work to a worker pursuant to this  
29 subsection (4) more than once, but in no event may the employer receive  
30 wage subsidies for more than sixty-six days of work in a consecutive  
31 twenty-four month period under one claim. An employer may continue to  
32 offer work pursuant to this subsection (4) after the worker has  
33 performed sixty-six days of work, but the employer shall not be  
34 eligible to receive wage subsidies for such work.

35 (h) An employer shall not receive any wage subsidies or  
36 reimbursement of any expenses pursuant to this subsection (4) unless  
37 the employer has completed and submitted the reimbursement request on  
38 forms developed by the department, along with all related information

1 required by department rules. No wage subsidy or reimbursement shall  
2 be paid to an employer who fails to submit a form for such payment  
3 within one year of the date the work was performed. In no event shall  
4 an employer receive wage subsidy payments or reimbursements of any  
5 expenses pursuant to this subsection (4) unless the worker's physician  
6 or licensed advanced registered nurse practitioner has restricted him  
7 or her from performing his or her usual work and the worker's physician  
8 or licensed advanced registered nurse practitioner has released him or  
9 her to perform the work offered.

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

13 (j) Once the worker returns to work under the terms of this  
14 subsection (4), he or she shall not be assigned by the employer to work  
15 other than the available work described without the worker's written  
16 consent, or without prior review and approval by the worker's physician  
17 or licensed advanced registered nurse practitioner. An employer who  
18 directs a claimant to perform work other than that approved by the  
19 attending physician and without the approval of the worker's physician  
20 or licensed advanced registered nurse practitioner shall not receive  
21 any wage subsidy or other reimbursements for such work.

22 (k) If the worker returns to work under this subsection (4), any  
23 employee health and welfare benefits that the worker was receiving at  
24 the time of injury shall continue or be resumed at the level provided  
25 at the time of injury. Such benefits shall not be continued or resumed  
26 if to do so is inconsistent with the terms of the benefit program, or  
27 with the terms of the collective bargaining agreement currently in  
28 force.

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

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

36 (6) The department shall create a Washington stay-at-work account  
37 which shall be funded by assessments of employers insured through the  
38 state fund for the costs of the payments authorized by subsection (4)

1 of this section and for the cost of creating a reserve for anticipated  
2 liabilities. Employers may collect up to one-half the fund assessment  
3 from workers.

4 (7) No worker shall receive compensation for or during the day on  
5 which injury was received or the three days following the same, unless  
6 his or her disability shall continue for a period of fourteen  
7 consecutive calendar days from date of injury: PROVIDED, That attempts  
8 to return to work in the first fourteen days following the injury shall  
9 not serve to break the continuity of the period of disability if the  
10 disability continues fourteen days after the injury occurs.

11 (8) Should a worker suffer a temporary total disability and should  
12 his or her employer at the time of the injury continue to pay him or  
13 her the wages which he or she was earning at the time of such injury,  
14 such injured worker shall not receive any payment provided in  
15 subsection (1) or (2) of this section during the period his or her  
16 employer shall so pay such wages: PROVIDED, That holiday pay, vacation  
17 pay, sick leave, or other similar benefits shall not be deemed to be  
18 payments by the employer for the purposes of this subsection.

19 (9) In no event shall the monthly payments provided in this  
20 section:

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

23	AFTER	PERCENTAGE
24	June 30, 1993	105%
25	June 30, 1994	110%
26	June 30, 1995	115%
27	June 30, 1996	120%
28	<u>June 30, 2013</u>	<u>100%</u>

29 (b) For dates of injury or disease manifestation after July 1,  
30 2008, be less than fifteen percent of the average monthly wage in the  
31 state as computed under RCW 51.08.018 plus an additional ten dollars  
32 per month if the worker is married and an additional ten dollars per  
33 month for each child of the worker up to a maximum of five children.  
34 However, if the monthly payment computed under this subsection (9)(b)

1 is greater than one hundred percent of the wages of the worker as  
2 determined under (~~RCW 51.08.178~~) section 1 of this act, the monthly  
3 payment due to the worker shall be equal to the greater of the monthly  
4 wages of the worker or the minimum benefit set forth in this section on  
5 June 30, 2008.

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

9 (11) The department shall adopt rules as necessary to implement  
10 this section.

11 NEW SECTION. Sec. 5. RCW 51.08.178 ("Wages"--Monthly wages as  
12 basis of compensation--Computation thereof) and 2007 c 297 s 1, 1988 c  
13 161 s 12, & 1980 c 14 s 5 are each repealed.

14 NEW SECTION. Sec. 6. This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and takes effect  
17 July 1, 2013.

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