# Individual State Agency Fiscal Note

| Bill Number: 5510 SB | Title: Workers' comp benefits | Agency: 235-Department of Labor and Industries |
|---|---|---|

## Part I: Estimates

☐ **No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Expenditures from:**

| | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|---|---|---|---|---|---|
| FTE Staff Years | 13.3 | 13.3 | 13.3 | 0.0 | 0.0 |
| **Account** | | | | | |
| Accident Account-State 608-1 | 867,000 | 783,500 | 1,650,500 | 0 | 0 |
| Medical Aid Account-State 609-1 | 867,000 | 783,500 | 1,650,500 | 0 | 0 |
| **Total $** | 1,734,000 | 1,567,000 | 3,301,000 | 0 | 0 |

**Estimated Capital Budget Impact:**

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☒ Requires new rule making, complete Part V.

| | | | |
|---|---|---|---|
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# Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

See attached.

### II. B - Cash receipts Impact

*Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

### II. C - Expenditures

*Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

See attached.

# Part III: Expenditure Detail

### III. A - Expenditures by Object Or Purpose

| | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|---|---|---|---|---|---|
| FTE Staff Years | 13.3 | 13.3 | 13.3 | | |
| A-Salaries and Wages | 786,000 | 786,000 | 1,572,000 | | |
| B-Employee Benefits | 296,000 | 296,000 | 592,000 | | |
| C-Professional Service Contracts | | | | | |
| E-Goods and Other Services | 532,000 | 482,000 | 1,014,000 | | |
| G-Travel | 3,000 | 3,000 | 6,000 | | |
| J-Capital Outlays | 117,000 | | 117,000 | | |
| M-Inter Agency/Fund Transfers | | | | | |
| N-Grants, Benefits & Client Services | | | | | |
| P-Debt Service | | | | | |
| S-Interagency Reimbursements | | | | | |
| T-Intra-Agency Reimbursements | | | | | |
| 9- | | | | | |
| **Total:** | $1,734,000 | $1,567,000 | $3,301,000 | $0 | $0 |

**III. B - Detail:** *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

| Job Classification | Salary | FY 2016 | FY 2017 | 2015-17 | 2017-19 | 2019-21 |
|---|---|---|---|---|---|---|
| fiscal analyst 2 | 40,524 | 2.3 | 2.3 | 2.3 | | |
| ITS4 | 71,496 | 2.0 | 2.0 | 2.0 | | |
| WCA3 | 55,836 | 4.0 | 4.0 | 4.0 | | |
| WCA4 | 58,656 | 2.0 | 2.0 | 2.0 | | |
| WCA5 | 63,192 | 1.0 | 1.0 | 1.0 | | |
| WMS It project mgr | 90,140 | 1.0 | 1.0 | 1.0 | | |
| WMS project mgr | 79,486 | 1.0 | 1.0 | 1.0 | | |
| **Total FTE's** | 459,330 | 13.3 | 13.3 | 13.3 | | 0.0 |

# Part IV: Capital Budget Impact

NONE

## Part V: New Rule Making Required

*Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.*

See attached.

# Part II: Explanation

The bill makes several changes in how certain workers' compensation benefits will be determined:

- **Wage calculation.** Eliminates the existing formulas for calculating a worker's wages. Changes the definition of "wages" for calculating time-loss and pension benefits to an annual average in most cases. Excludes health and welfare benefits from the definition of wages, essentially repealing the Supreme Court's 2001 *Cockle* decision.
- **Flat rate.** Eliminates the current variable range for determining benefits which is 60 to 75 percent of the worker's wages based on marital and dependent status. Replaces the variable percentages based on marital status and number of dependents with a fixed percentage of 66 2/3 percent, for injuries after July 1, 2015, for time-loss compensation (TLC), total permanent disability (TPD) benefits, and survivor death benefits.
- **Minimum benefits.** Eliminates the range of minimum benefits that also relate to the worker's marital and dependent status. For injuries after July 1, 2015, the TLC/TPD minimum is a fixed figure of $276 a month rather than being based on a percentage of the average monthly wage in the state.
- **Loss of earning power.** Specifies that loss of earning power benefits (also known as LEP or temporary partial disability) terminate when the worker's condition reaches maximum medical improvement, and provides that the worker must be working to receive these benefits.

Under current law, rates of time-loss compensation and pension benefits are based on factors that include the worker's wages at the time of injury in most cases, and their marital and dependent status. Annual averaging of wages is used only on an exception basis.

## II. A – Brief Description of What the Measure Does that Has Fiscal Impact

**Section 1:** Adds a new section to 51.08 (Definitions) that defines "wages" and how an injured worker's monthly wage must be determined depending on whether they are a permanent or temporary worker. This section replaces RCW 51.08.178 (Wages—Monthly wages as basis of compensation—Computation thereof), which is repealed by section 5 of this bill.

Subsection (1): Permanent employment – wage calculation.

- Provides that if a worker is injured while working in a permanent job, the worker's monthly wage is determined by dividing by 12 the total wages earned at that job and any other concurrent employment, including cash bonuses and overtime, in the preceding 12 months before the injury occurred or disease manifested.
- If the worker worked for less than 12 months, then the worker's monthly wage is based on the total wages earned, divided by the total number of months actually worked.

Subsection (2): Temporary employment – wage calculation.

- If the worker is injured on a temporary job, the monthly wage is calculated by dividing by 12 the total wages earned from *all* employment, including bonuses and overtime, in the preceding 12 months.

Subsection (3): Defines "wages" as the gross monetary compensation for services performed in a pay period, paid in cash, by check, by electronic transfer, or by other means directly to the worker or to an account designated by the worker. Wages would:

- Include the value of board, housing, and fuel as part of the contract of hire; and tips as reported to the employer for income tax purposes.
- Exclude health and welfare benefits, along with other employer-provided benefits such as savings matching programs, retirement and financial benefit plans, insurance, unused accrued leave, employee discounts, etc.

**Section 2**: Amends RCW 51.32.050 (Death Benefits) to change survivor benefit calculations to the flat rate for injuries that occur and diseases that manifest on or after July 1, 2015.

**Section 3:** Amends RCW 51.32.060 (Permanent total disability compensation - Personal attendant) to impose the proposed flat rate and new minimum for injuries that occur and diseases that manifest on or after July 1, 2015.

**Section 4:** Amends RCW 51.32.090 (Permanent and temporary partial disability) to impose the proposed flat rate and new minimum for claims with dates of injury and disease manifestation on or after July 1, 2015. It amends loss-of-earning power (LEP) provisions so that these benefits are to be paid while working and until maximum medical improvement.

**Section 6:** Emergency clause; provides that the act takes effect on July 1, 2015.

## II. B – Cash Receipt Impact

For fiscal analysis purposes, we assume any incremental savings will equal the incremental revenue collected.

## II. C – Expenditures

### Operating Costs / Appropriated

**Staffing**

With the multiple changes in the agency's wage and payment processes and the emergency clause for an effective date of July 1, 2015, the department will need the following staff for implementation:

- **One WMS IT Project Manager** who will provide oversight of the technology project and contracted staff. This project position will begin July 1, 2015, and end June 30, 2017.
- **One WMS Business Project Manager** who will coordinate the gathering of business requirements for programming our technology systems. This project position will begin July 1, 2015, and end June 30, 2017.
- **Two Business Analysts**, these subject matter experts in claims and wage calculation, will assist with developing, designing and testing the technology changes. They will coordinate changes with both the state fund self-insurance program to ensure consistency, develop communication plans, and establish work groups. These positions would begin July 1, 2015, and end June 30, 2017.
- **One Worker Compensation Adjudicator (WCA) 5** who will supervise and oversee manual process of wage calculation for the state fund until the technology solution is completed, and recording of data. This position would begin July 1, 2015, and end June 30, 2017.
- **Four WCA 3s** who will complete the manual calculation of wages and entry of wages into the claims system until automated modifications are completed. This unit would also be responsible for coordinating outreach to the employer community and ensuring agency

forms and publications are updated. These positions would begin July 1, 2015, and end June 30, 2017.

It is assumed that using an annual average for most wages will be simpler once wage documentation is obtained. Administrative savings will be offset by staff time needed to gather 12 months of wage data. Additionally, no efficiencies will be observed during the first two years while system and process changes are being implemented, and after that time any efficiencies are indeterminate.

**Information Technology**

For Information Services to accomplish the intent of this legislation, system modifications are needed to address the benefit determination changes. The following assumptions were used to estimate the technology requirements:

- Changes to the existing formulas for calculating the worker's wages and monthly payments for claims.
- Maintains the same calculation of pension and time-loss benefits for claims with a date of injury or manifestation of occupational disease prior to July 1, 2015.
- Removes compensation for dependents that are not in the custody of the injured worker to claims on or after July 1, 2015.

It is estimated these efforts will take 5,680 contracted hours and two years to complete. The project will begin July 1, 2015, and run through June 30, 2017. The first six months of the project will be used to define the new calculations and detailed business requirements. Current staffing levels will complete maintenance requirements for these claims applications. The estimated technology costs are $546,000 for the 2015-17 Biennium.

**Forms and Publications**

This bill will require changes to some of our forms and publications. Below are the costs assumed for printing and mailing the average one-year supply of the State Fund Report of Accident (ROA), the Spanish instructions for the ROA, and the Self-Insured Accident Report (SIF-2).

There will also be a cost to review and modify publications that describe workers' benefits or benefit calculations. We anticipate the publications listed below will need to be replaced. Editing, graphic design and translation will be covered in current staffing levels. The estimated costs are $79,365 for the 2015-2017 Biennium.

**Indirect**

The amount included in this fiscal note for indirect is:

| Fund Name, Fund # | FY2016 | FY2017 | FY2018 | FY2019 | FY2020 | FY2021 |
|---|---|---|---|---|---|---|
| Accident Fund, 608 | $48,000 | $48,000 | | | | |
| Medical Aid Fund, 609 | $48,000 | $48,000 | | | | |

We convert the total indirect amount into salary and benefits for partial or full indirect FTEs. Salary and benefits costs are based on a Financial Analyst 2 (Range 44, Step G).

## Benefits Costs / Non-Appropriated

*These cost savings are not reflected in the Fiscal Note System FN1.*

Overall, the bill will reduce the total time-loss and pension benefits incurred by injured workers insured by the Washington State Fund by 4.2 percent annually beginning with injuries and illnesses that occur on or after the effective date of this bill, July 1, 2015. Time-loss and pension benefits are each expected to be reduced by 4.4 percent and 4.0 percent respectively. ***The six-year impact is a total reduction of -$212.6 million*** as shown in the exhibit broken down by the fiscal year of injury/illness and also by benefit type. This is also a 3.5 percent reduction to each annual total Accident Fund benefits incurred. These impacts will be different for self-insured firms as they have different wage distributions and hire patterns.

In 2013, the overall impact was estimated as a reduction in time-loss and pension benefits of 6.9 percent. The major difference between the current proposed bill and the previously proposed bill is that the current bill does not reduce the maximum compensation from 120 percent of the state's average annual wage at year of injury/illness to 100 percent of the state's average annual wage. The overall effect of the lowering of the maximum compensation was estimated last time as a reduction of 2.2 percent. That accounts for most of the difference between the two analyses. The estimated effects will be a little different for each factor as the interaction with the change in maximum will have different effects by industry as the wage distributions are unique to each industry. In addition, the industry mix has changed since 2010.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | Amounts in $1,000s | | |
| Benefits incurred without the proposed changes | | | | | Change based on proposed bill | | |
| Fiscal Year | Time-loss | Pensions | Total Accident Fund | % change | Time-loss | Pensions | Total Accident Fund |
| 2014 | 427,600 | 283,000 | 853,770 | BASE | | | |
| 2015 | 440,500 | 291,600 | 879,600 | 3.0% | | | |
| | | | | | | | |
| **2016** | 458,300 | 303,400 | 915,100 | 4.0% | $ (20,200) | $ (12,100) | **$ (32,300)** |
| **2017** | 476,800 | 315,600 | 952,000 | 4.0% | $ (21,000) | $ (12,600) | **$ (33,600)** |
| **2018** | 493,600 | 326,700 | 985,600 | 3.5% | $ (21,700) | $ (13,100) | **$ (34,800)** |
| **2019** | 511,000 | 338,200 | 1,020,400 | 3.5% | $ (22,500) | $ (13,500) | **$ (36,000)** |
| **2020** | 529,000 | 350,100 | 1,056,400 | 3.5% | $ (23,300) | $ (14,000) | **$ (37,300)** |
| **2021** | 547,700 | 362,500 | 1,093,700 | 3.5% | $ (24,100) | $ (14,500) | **$ (38,600)** |
| | | | | | | | |
| 6 Year Totals | **$3,016,400** | **$1,996,500** | **$6,023,200** | | $ (132,800) | $ (79,800) | **$ (212,600)** |
| | | | | | | | |
| | | **-4.4%** | Percentage change for timeloss benefits | | | | |
| | | **-4.0%** | Percentage change for pension benefits | | | | |

The bill will change the following calculations of time-loss and pension benefits as follows:

1) Calculation excludes consideration of health insurance benefits that are currently included.
2) Calculation is based on a 12 month average of prior wages, unless the worker is deemed "permanent" and has worked for the employer of record less than 12 months. Then the wage averaging is based on the employment duration with that employer.
3) Monthly compensation is at least a minimum of $276.
4) Monthly compensation is two-thirds of the calculated monthly wage.

The next exhibit first shows the percentage impact upon the time-loss and pension benefits of each of the industry groups of insurance risk classifications. This was based on a study of claims with dates of injury/illness during fiscal years 2008 to 2010. Please note that any risk classification within an industry group may have a different impact than listed in the exhibit, as the percentages shown are averages for each group of risk classifications. The overall impact is projected by weighting the accident fund premiums for the year ended September 30, 2014, as the future time-loss and pension benefits in these industries will be proportional to the future premiums.

| SB 5510 - Effect of Different Provisions by Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Industry** | Annual accident fund premiums Year ending 9/30/2014 | **Total** | **Health care** | **Averaging** | **Minimum Compensation** | **2/3 compensation rate** | **Interaction** |
| Agriculture | 43,705,841 | **-2.1%** | -0.9% | -2.7% | -0.6% | 1.7% | 0.5% |
| Building Construction | 130,932,640 | **-7.8%** | -3.2% | -8.0% | 0.0% | 3.0% | 0.5% |
| Dealers and Wholesalers | 43,250,682 | **-1.3%** | -4.4% | -0.7% | 0.0% | 3.7% | 0.2% |
| Food Processing and Manufacturing | 32,169,495 | **-1.0%** | -3.8% | -0.4% | -0.1% | 3.1% | 0.2% |
| Forest Products | 45,991,282 | **-5.1%** | -3.7% | -4.8% | 0.0% | 3.0% | 0.5% |
| Government | 103,286,516 | **-3.1%** | -6.3% | -0.1% | 0.0% | 3.4% | -0.1% |
| Health Care | 48,431,341 | **-2.1%** | -3.2% | -2.7% | 0.0% | 3.7% | 0.2% |
| Metal and Machinery Manufacturing | 43,314,642 | **-3.0%** | -4.4% | -2.3% | 0.0% | 3.6% | 0.2% |
| Misc. Professional and Clerical | 60,552,097 | **-2.5%** | -3.2% | -3.3% | -0.1% | 3.8% | 0.3% |
| Miscellaneous Construction | 85,179,500 | **-7.2%** | -3.5% | -7.2% | 0.0% | 3.2% | 0.4% |
| Miscellaneous Manufacturing | 29,247,617 | **-2.8%** | -4.7% | -1.5% | 0.0% | 2.9% | 0.4% |
| Miscellaneous Services | 177,248,988 | **-2.8%** | -3.2% | -4.3% | -0.2% | 4.2% | 0.8% |
| Schools | 32,563,866 | **-6.3%** | -6.2% | -4.2% | -0.1% | 3.7% | 0.5% |
| Stores | 52,005,412 | **-3.5%** | -3.9% | -4.1% | -0.2% | 4.1% | 0.6% |
| Temporary Help | 17,658,460 | **-5.7%** | -0.8% | -8.8% | -0.2% | 4.0% | 0.2% |
| Trades | 114,583,798 | **-7.1%** | -3.5% | -6.5% | 0.0% | 2.5% | 0.5% |
| Transportation and Warehousing | 104,749,191 | **-2.6%** | -4.1% | -2.5% | 0.0% | 3.9% | 0.2% |
| Utilities and Communications | 8,171,897 | **-0.7%** | -3.8% | 0.3% | 0.0% | 3.3% | -0.5% |
| | | | | | | | |
| **TOTAL** | 1,173,043,264 | **-4.2%** | **-3.8%** | **-4.1%** | **-0.09%** | **3.4%** | **0.4%** |

The impacts on the sub-total of time-loss and pension benefits incurred are:

- Health care insurance exclusion: 3.8 percent reduction
- Averaging: 4.1 percent reduction
- $276 minimum: 0.09 percent reduction
- 2/3rds compensation rate: 3.4 percent increase

Because of interaction between these changes for the various industries the sum of individual impacts cannot be added together to equal 4.2 percent.

**Actuarial assumptions and data used in the analysis**

**Health care insurance assumption:** We assumed that all claims with health care insurance only had this component added to their wages for benefits earned after one month from the time of injury. This one month is an average found in earlier studies.

**Wage averaging assumptions:**

1) We assumed that this -4.1 percent was the impact to overall time-loss benefit reduction averaged across all industries. We learned from WorksafeBC (the exclusive provincial workers' compensation insurance fund in British Columbia, Canada) actuaries that the

impact of wage averaging is a reduction of -4.4 percent of time-loss benefits in BC using a percentage of wage compensation calculation similar to ours. Their time-loss benefits are based on the wage at injury for the first 10 weeks following by benefits based on 12-month averaging afterwards.

2) We assumed that for workers deemed “permanent” with a duration of employment less than 365 days, that the wage determined currently was the same as that determined using the proposed averaging scheme for these workers (averaging wages over the duration of their work with this recent employer.)

3) For other workers, we took a weighted average between the current monthly wage with the 12 month average based on Employment Security Department (ESD) records, for those claims with ESD unemployment information prior to injury. We did this to adjust for the fact that ESD records are partially missing some of the wage data. To assure that we didn’t upwardly adjust the wages too high we balanced the overall data to the -4.4 percent compensation reduction found in British Columbia, Canada.

**Pension benefits assumption:** Pension claims that are receiving Social Security benefits will usually not be affected by these proposed changes because the total limitation of pension benefits and Social Security benefits are determined by a federal formula. Actuarial studies show that 59.1 percent of pension benefits incurred involves an offset of federal benefits, and that the offset will eliminate 37.7 percent of the estimated change on these pensions. Therefore, we have reduced the estimated effect on pension claims by 22.3 percent (= 37.7% x 59.1%).

**Data:** We used records from the L&I and ESD databases, based on claims where we could match worker’s compensation and prior-to-injury unemployment insurance data. Workers’ compensation claims with time-loss and pension benefits with injury dates during fiscal year 2008 to 2010 were used. We had a 91.1 percent match between L&I and ESD claimant records.

## Part IV: Capital Budget Impact

None.

## Part V: New Rule Making Required

Rulemaking is necessary to amend the following WACs:

- WAC 296-14-522: “What does the term ‘wages’ mean?”

- WAC 296-14-524: “How do I determine whether an employer provided benefit qualifies as ‘consideration of like nature’ to board, housing and fuel?”
- WAC 296-14-526: “Is the value of ‘consideration of like nature’ always included in determining the worker's compensation?”
- WAC 296-14-528: “How do I determine the value of a benefit that qualifies as ‘consideration of like nature’?”
- WAC 296-14-530: “Is overtime considered in calculating the worker's monthly wage?”