



UTILIZING YOUR RETURN TO WORK PROGRAM

Craig Bock, MA, CRC
Certified Rehabilitation Counselor
Bock Consulting, Inc.

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RETURN-TO-WORK PROGRAMS

Why employers can't afford
not to have one....

And how to go about creating one!

Return-to-Work Programs Work!

- Reduces time-loss costs.
- Prevents “disability conviction” (the longer a worker is off work, the less likely they will return to work).
- Sends a message to all workers.
- Provides skills that may be used in other jobs (increases employability!).



Benefits for the Worker

- The longer they are away from the job market, the more difficult it will be to re-enter.
- Jobs can provide benefits for their family.
- Moving jobs is easier once employed.
- Time loss benefits are limited and relatively stagnant.
- They can take back control of their life.



Benefits for the Employer

- Low employee turnover reduces hiring and training costs.
- Minimizes overtime.
- Retaining skilled workers increases productivity.
- Improved labor relations.



Other Things to Consider

- What motivates this worker?

- Money
- Attention
- Status
- Family
- Retirement



- How can they best benefit from this limited opportunity?

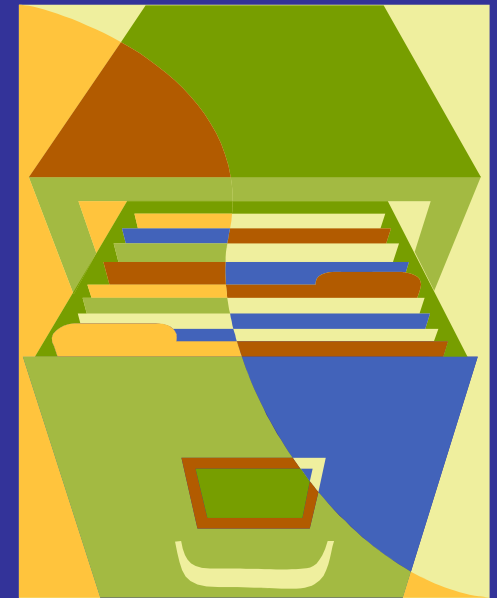
Program “Must-Haves”

- Support:
 - At the top
 - Front-line supervisors
 - Union (when applicable)
- Consistency.
- Meaningful and productive work/tasks for transitional work.



Program “Must-Haves” (con’t)

- Policy of establishing immediate contact with attending physician.
- Resources (one of the following):
 1. “Bank” of light-duty job analyses, and job analyses of the most frequent jobs of injury.
 2. List of light-duty activities for the attending physician’s approval.



Steps to Success

- Envision and plan your program.
- Gain support.
- Be proactive – Communicate!
- Early intervention with worker.
- Clear and structured program.
- Follow-up and make changes as needed.





Ultimate Program Goal

Whatever the cultural climate, company philosophy, and methodology, the end goal is the same:

Successful return to productive employment and resolution of the injured condition.

Before Injuries Occur

- Train personnel.
 - New employee orientation.
 - Safety training sessions.
- “Partner” with a local medical clinic.
- Identify specialists: orthopedists, therapists, independent medical examiners, etc.
- Develop return-to-work program forms and an initial claim packet.



Identifying Transitional Work

- Essential functions – What is required to meet the needs of the job?
- Job Analysis and Task Analysis.
- Employer-created “wish list.”
- Real work:
 - Has value.
 - Is within the scope of employment common to the industry of the employer.



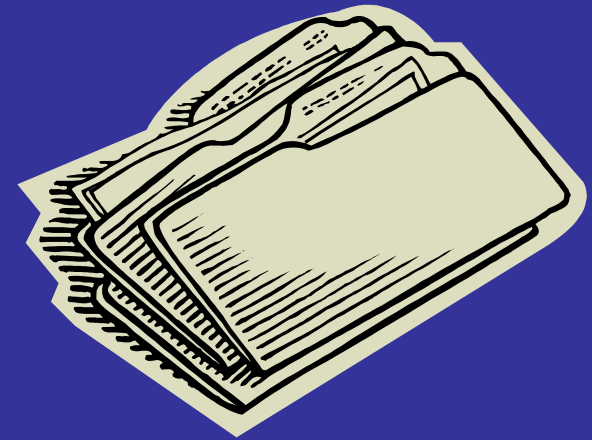


Specific Vocational Preparation

“The amount of time required to learn the techniques, acquire the information and develop the facility needed for average performance in a specific job-worker situation.”

(Handbook for Analyzing Jobs)

After Injuries Occur



- Go with worker to physician, if possible. Bring return-to-work forms and job analyses.
- Explain return-to-work program to physician.
- Obtain “abilities” from physician.
 - Use job analyses, light-duty task lists (tasks vs. jobs).
 - Medical chart notes, narrative reports.
- Obtain physician approval for transitional job.

“Transitional (Light-Duty) Work”

- Matches worker’s employment pattern at time of injury.
- Reduced work demands in keeping with worker’s limitations.
- Generally offered when worker is medically unstable, but expected to improve.
- Duties may be added as worker improves.



Transitional Work Solutions

- Sometimes you have to be creative.
- Suggestions:
 - Think beyond the work area.
 - Focus on skills/interests of the individual.
 - Value-added services.
 - Skill enhancement.
 - Mentoring.
 - Special projects.



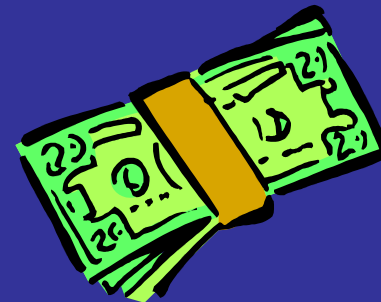
“Graduated Transitional Work”

- Gradual increase in work hours during period of medical instability.
- Possible increase in work demands as worker improves.
- Return-to-work strategy is to return worker to job with same employment pattern as the job of injury.



Transitional Work Issues

- Don't keep workers in transitional duty for unidentified period of time.
- Develop a graduated return-to-work plan with physician, supervisor, and worker.
- Consider limiting transitional duty: 90 days?
- Pay levels - Regular pay?
- Know when to call it quits.



Return-to-Work Process

■ Employer:

- Work closely with physician and worker to identify safe activities worker can perform.
- Get written approval from the physician for transitional work activities.
- Identify available productive activities which employee can perform within identified restrictions.

Return-to-Work Process

- Employee:

- Return to work when productive activities are available within physical abilities outlined by physician.
- Participate in recommended medical treatment.

Transitional Job Offer

- Offer should be in writing.
- Supported by an approved job analysis, or other signed documentation from the attending physician.
- The employer should give the worker adequate advance notice.



Job Modification Methods

- Job restructuring.
- Alteration of specific work tasks.
- Use of assistive or adaptive devices.
 - Mechanical lifting aid.
- Work site adjustment.
 - Higher workbench.



Permanent Return-to-Work Jobs

- Offered to workers with permanent restrictions.
- Should match worker's employment pattern at time of injury.
- Should involve work that is of value to the employer's business (e.g., cement drying)
- Approved in writing by the attending physician; considers pre-existing conditions



Permanent Return-to-Work Jobs

- Job for which worker has skills and aptitudes, or employer has documented how it will provide skills.
- Health and welfare benefits continue or resume to level at time of injury.
- Position lasts for a continuous period of time.
- Bottom line: The job has to make sense.

Return-to-Work Program Projects

- Workers' compensation costs drain resources from businesses.
- Why wait until employers suggest establishing a return-to-work program?
- Studies¹ show coordinated return-to-work programs are a key element in controlling workers' compensation costs, and also benefit workers.

(1) "Regaining Control of Workers' Compensation Cost: The Second Biennial report, 1993," Towers Perrin (pg. 9), "Structured return-to-work and the American with Disabilities Act," Healthcost Monitor, R. Groepper (1993).



So What!

The Health Project

- Organization consisting of stakeholders in the health care industry trying to bring attitudinal and behavioral changes in the American health care system.
- Recognizes programs through annual awards that:
 - Reduce need and demand for medical services.
 - Pursue Healthy People 2010 goals.
 - Reduce health care costs.



2003 Award Recipient:



- FedEx Corporation was awarded a 2003 C. Everett Koop National Health Award for its Human Capital Management (“HCM”) Program.
- Key Element In Program:
Temporary Return to Work (“TRW”) Policy was instrumental to the success of the HCM Program.

FedEx TRW Policy

- According to FedEx, the TRW Policy:
 - Allows employees to return to work and remain productive during partial disability.
 - Helps employees maintain a sense of belonging in the work group.
 - Encourages and facilitates earlier return to full duty.
 - Helps speed recovery.

Does It Work For FedEx?

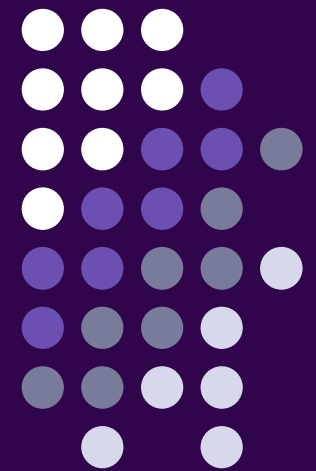
- Duration of disability claims for FedEx averaged 61 days, compared to 107 for the transportation industry.
- Disability claims costs decreased 2.5% from FY96 through FY00, while employment increased 20,000.
- The comprehensive Human Capital Management (HCM) Program saved FedEx \$1 billion from FY94 through FY00.



Questions?

Senate Bill 5920

Establishing a Pilot Program for
Vocational Rehabilitation
Services

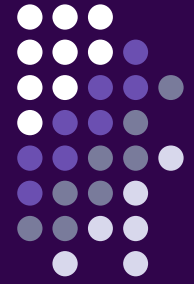


Introduction



- Effective January 1, 2008
- Changes to Vocational Rehabilitation System
 - Increased benefits
 - More choices for workers
 - Accountability
- Committee
- Timeline

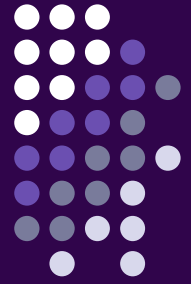




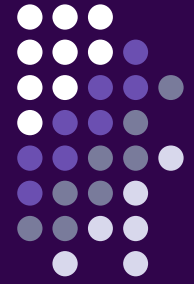
“This bill helps injured workers get back to work and gain skills that will help them to succeed in the global economy. Investing in high quality worker retraining and providing greater accountability makes good, practical economic sense.” – Governor Chris Gregoire



Background



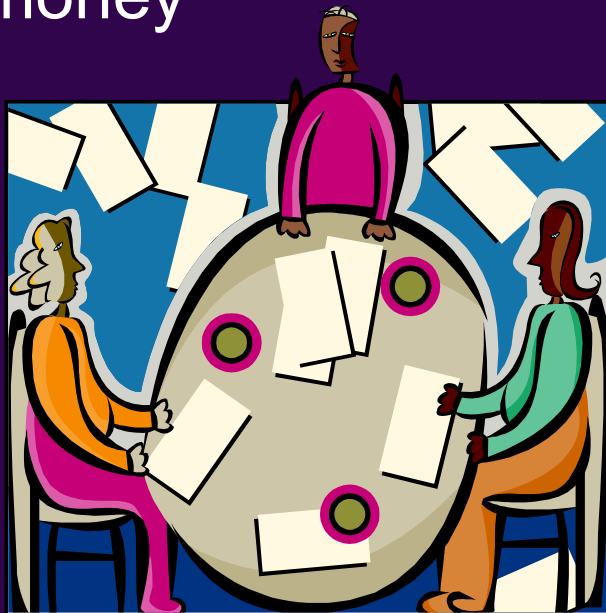
- **Purpose:** assist the worker to become employable at gainful employment
- **Ability-to-work Assessment:**
 - Determines if an injured worker should receive vocational rehabilitation services
 - Must recommend one of the following:
 - (1) Worker is employable
 - (2) Worker needs vocational rehabilitation services
 - (3) Worker not likely to benefit from vocational services



Changes

OLD

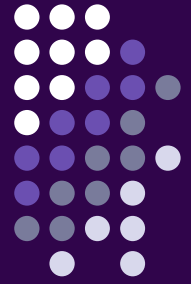
- \$4,000 and 52 weeks of retraining time and money



NEW

- Up to \$12,000 (indexed to tuition inflation) and 2 years of retraining benefits
- Continued time loss benefits during retraining

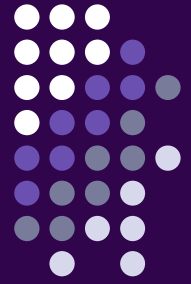
Requirements of ESSB 5920



- Create a vocational rehabilitation pilot program from January 1, 2008 until June 30, 2013
- Vocational Initiative Project
- Vocational Rehabilitation Subcommittee
- Vocational Referral, Plan Development, and Approval



Vocational Initiative Project

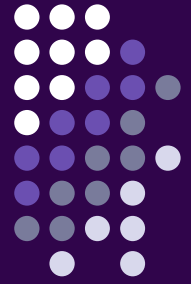


- Partnership between L&I and WorkSource
- L&I must:
 - Place full-time vocational professionals at pilot WorkSource locations
 - Refer some workers to these professionals
 - Work with employers in pilot WorkSource areas to market the benefits of the programs
 - Reserve slots in high-demand community college programs for vocational plan development
 - Develop additional vocational training programs



Washington State Department of
Labor and Industries
Protecting Washington Citizens

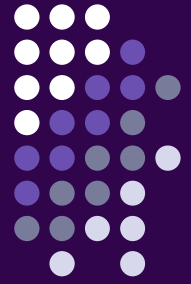
Vocational Rehabilitation Subcommittee



- Created by L&I
- Members appointed by L&I for at least the duration of pilot program
- Committee reports to L&I annually, recommend changes



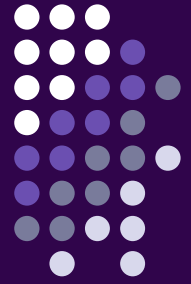
Vocational Referral, Plan Development, and Approval



- Make worker employable!
- Willful Misrepresentation
- Initial Meeting with Worker
- Inform employer of right to make RTW offer
- Vocational Plan
 - 90 days
 - Accountability Agreement
 - Formal Education
- Plan Development
 - Counseling
 - Occupational Exploring

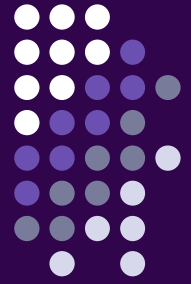


Vocational Costs & Time Frames



- Allowable costs:
\$12,000
 - Must be adjusted on July 1st of each year
- Adjustment:
 - Based on average % change in tuition for the next fall quarter for all Washington community colleges
- 2 Year Limit for Vocational Plan

Worker Options



Option One:

- Participate in the vocational plan

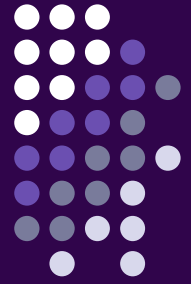


Option Two:

- Decline to participate, receive other benefits
- 15 days after approval to select
- Entitled to 6 months time loss
- Tuition/Education benefits
- Confirmation Order



Future Vocational Assistance



If claim is re-opened or worker files new claim:

Option One:

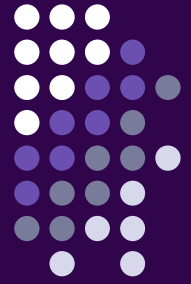
- Successful completion of plan
- Must consider transferable skills obtained in vocational plan
- \$12,000 cap and 2 year limit, minus amounts previously spent

Option Two:

- Allowed 5 years following option selection and claim closure
- Limit of 18 months and \$12,000 minus training at accredited institution
- Cannot choose option two for subsequent claim or reopening

Director can choose to allow future vocational assistance regardless of prior option selection

Vocational Plan Interruption



Definition:

- Goal no longer attainable within cost and time limits
- Does not include illness or school breaks

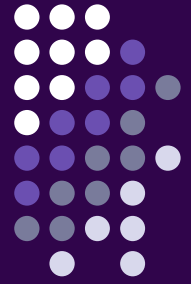


Result of worker's actions?

- Entitlement to benefits suspended
- Examples:
 - Failure to attend class
 - Failure to abide by accountability agreement

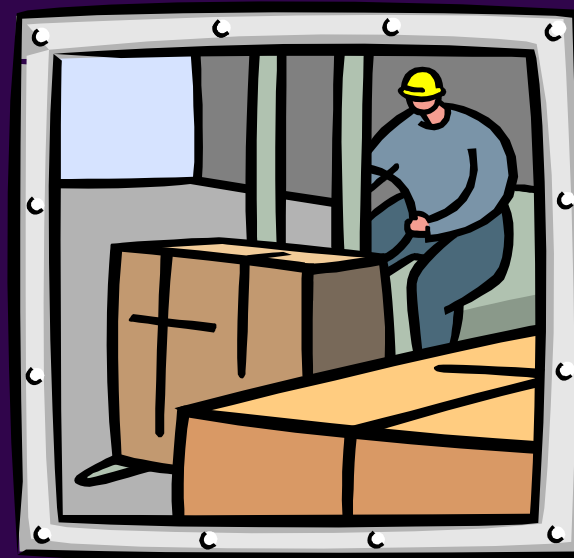
Beyond control of the worker?

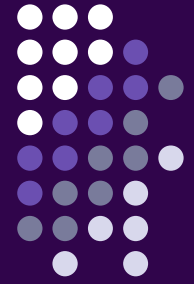
- Recommence plan development
- Ex: School closure, death of close family member, change in medical condition



Costs to Employer

- Chargeable to the employer's cost experience or paid by self-insured employer
- Paid from medical aid fund for certain scenarios
 - Costs are not charged to employer's cost experience





Other Requirements

- L&I must maintain register of workers
- Study and Review
 - Pilot program achievements and costs
 - Specific guidelines
- Annual Report due December 1st
- Report expenses to medical fund

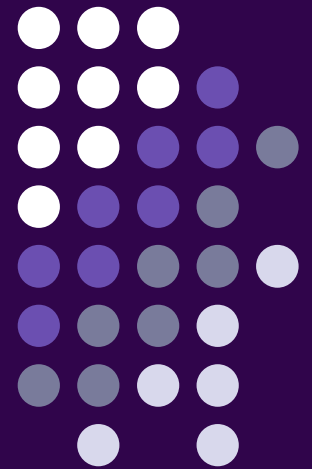
EFFECTIVE: January 1, 2008



Thank You!

Lawrence E. Mann

Wallace, Klor and Mann
5800 Meadows Rd. Suite 220
Lake Oswego, OR 97035
503-224-8949



RCW 51.32.090**Temporary total disability — Partial restoration of earning power — Return to available work — When employer continues wages — Limitations. (Effective until July 1, 2008.)**

(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) 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 practitioner, 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.

(b) 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.

(c) 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.

(d) 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: 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.

(7) In no event shall the monthly payments provided in this section 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%

(8) 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.

[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.]

Notes:

Report to legislature -- Effective date -- Severability -- 2004 c 65: See notes following RCW 51.04.030.

Effective date -- 1993 c 521: See note following RCW 51.32.050.

Effective date -- 1993 c 299: "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 shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date -- 1993 c 271: "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 shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases -- Application to certain retrospective rating agreements -- Effective dates -- 1988 c 161: See notes following RCW 51.32.050.

Expiration date -- 1986 c 59 § 2; Effective dates -- 1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review -- 1985 c 462: See note following RCW 41.04.500.

RCW 51.32.090

Temporary total disability — Partial restoration of earning power — Return to available work — When employer continues wages — Limitations. (Effective July 1, 2008.)

(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.

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(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) 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 practitioner, 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.

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(d) 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: 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.

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(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 (7)(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.

(8) 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.

[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.]

Notes:

Reviser's note: This section was amended by 2007 c 190 § 1 and by 2007 c 284 § 3, 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).

Effective date -- 2007 c 284: See note following RCW 51.32.050.

Report to legislature -- Effective date -- Severability -- 2004 c 65: See notes following RCW 51.04.030.

Effective date -- 1993 c 521: See note following RCW 51.32.050.

Effective date -- 1993 c 299: "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 shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date -- 1993 c 271: "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 shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases -- Application to certain retrospective rating agreements -- Effective dates -- 1988 c 161: See notes following RCW 51.32.050.

Expiration date -- 1986 c 59 § 2; Effective dates -- 1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review -- 1985 c 462: See note following RCW 41.04.500.

RCW 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 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 (3) of this 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:

- (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.

RCW 51.32.099**Vocational rehabilitation pilot program — Vocational plans.
(Effective January 1, 2008, until June 30, 2013.)**

(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, 2013. 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 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) An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

(c) In implementing the pilot program, the department shall:

(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 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 demand programs. 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 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 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 provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

(iv) The department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature and to the subcommittee by December 1, 2009, and annually thereafter with the final report due by December 1, 2012. The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed. The final report shall include the department's assessment and recommendations for further legislative action, in collaboration with the subcommittee.

(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.

(b) When vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall 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, 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 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 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. 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 terminated effective [on] the starting date for the job without regard to whether the worker accepts the return-to-work offer. Following the fifteen-day period, 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 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 result in suspension of vocational benefits pursuant to RCW 51.32.110.

(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 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 be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)(c)(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 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 not exceed two years from the date the plan is implemented. The worker shall 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 also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. During vocational plan development the worker shall, 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 be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall 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 approval of the plan by the department, elect option 2.

(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 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 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 remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, 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 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. The department shall thereafter close the claim.

(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 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 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 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 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 be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall 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.

[2007 c 72 § 2.]

Notes:

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 -- 2007 c 72: "This act expires June 30, 2013." [2007 c 72 § 6.]

RCW 51.32.0991**Vocational services and plans — Costs — Medical aid fund expenses.
(Effective January 1, 2008, until June 30, 2013.)**

(1) Costs paid for vocational services and plans shall be chargeable to the employer's cost experience or shall 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);

(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.

(2) The vocational plan costs payable from the medical aid fund shall 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 shall not be charged to the state fund employer's cost experience.

(3) For the duration of the vocational pilot program, all expenses to the medical aid fund resulting from the director's discretionary decisions as provided in subsection (1) of this section shall be separately documented as a medical aid fund expenditure and reported to the vocational rehabilitation subcommittee and the legislature annually. This report shall include the number of claims for which relief to the state fund employer was provided and the average cost per claim. A report to the vocational rehabilitation subcommittee and the legislature shall also be made annually including the number of claims and average cost per claim reported by self-insured employers for claims meeting the requirements in subsection (1)(a), (b), and (d) of this section.

[2007 c 72 § 3.]

Notes:

Implementation -- Effective date -- Expiration date -- 2007 c 72: See notes following RCW 51.32.099.

WAC 296-19A-010 - Definitions

(1) What does it mean to say an injured worker is employable?

- (a) "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:
 - (i) Age, education, and experience;
 - (ii) Preexisting physical and mental limitations; and
 - (iii) Physical and mental limitations caused, at least in part, by the worker's industrial injury or occupational disease.
- (b) Physical and/or mental conditions that arose after the industrial injury/occupational disease that were not caused or aggravated by the industrial injury/occupational disease are not considered in determining whether the worker is employable under the Industrial Insurance Act.

If there are no physical or mental restrictions caused by the worker's industrial injury/occupational disease, the worker must be found employable under the Industrial Insurance Act.

(2) What are vocational rehabilitation services? Vocational rehabilitation services are those provided by a vocational rehabilitation provider and include, but are not limited to, the following:

- (a) Gathering industrially injured or ill workers' work and/or education histories and physical capacities information;
- (b) Assessing industrially injured or ill workers' employability;
- (c) Developing, documenting, and writing vocational rehabilitation plans;
- (d) Monitoring injured workers' progress during training;
- (e) Writing progress reports;
- (f) Analyzing and documenting the transferable skills of the injured worker and writing transferable skills analyses;
- (g) Performing occupational research;
- (h) Conducting labor market surveys and writing labor market survey reports;
- (i) Conducting and writing job analyses;
- (j) Communicating with industrially injured or ill workers, employers, physicians and others;

- (k) Developing job modifications and work site modifications, as well as prejob accommodations, and writing reports for this work; and
- (l) All work done to obtain any job with any employer for injured workers referred for vocational rehabilitation services.

(3) **What is a vocational rehabilitation provider (provider)?** A provider is any person, firm, partnership, corporation, or other legal entity that provides vocational rehabilitation services to industrially injured or ill workers, pursuant to RCW 51.32.095. A provider must meet the qualifications listed in WAC 296-19A-210.

(4) **What is an injured worker's labor market?** Generally, the worker's relevant labor market is the geographic area where the worker was last gainfully employed. The labor market must be within a reasonable commuting distance and be consistent with the industrially injured or ill worker's physical and mental capacities. The exceptions to this rule are listed in the table below:

When a worker:	Then the department:
<ul style="list-style-type: none"> • Relocates to a labor market other than at the time of injury and • Returns to work and • Suffers an aggravation of the work-related condition. 	<p>Uses the labor market where the industrially injured or ill worker worked at the time of the aggravation. This applies whether the department closed and reopened the claim or whether the claim remained open during the period of aggravation.</p>
<ul style="list-style-type: none"> • Relocates after the industrial injury/illness or aggravation and • Now lives in a labor market with more employment opportunities than where the industrially injured or ill worker worked at the time of injury. 	<p>Uses the industrially injured or ill worker's current labor market. For example, an industrially injured or ill worker was injured in Forks but after the injury, moves to Tacoma. Provider would use Tacoma as the industrially injured or ill worker's labor market.</p>
<ul style="list-style-type: none"> • Relocates to a labor market other than at the time of injury or onset of illness and • The move was proximately caused by the medical condition arising from the occupational injury or disease. 	<p>Uses the injured or ill worker's current labor market. For example, an industrially injured or ill worker moves to a drier climate due to an accepted asthma condition. Provider would use the labor market in the drier climate.</p>

(5) **What is a labor market survey (LMS)?** It is a survey of employers in an industrially injured or ill worker's labor market to obtain specific information (such as physical demands and qualifications) related to job possibilities.

(6) **What is a job analysis (JA)?** It is the gathering, evaluating, and recording of accurate, objective data about the characteristics of a particular job.

(7) **What is a transferable skill?** Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and work-related skills that can be readily applied by the worker. They are skills that are interchangeable among different jobs and workplaces. Nonwork-related talents or skills that are both demonstrated and applicable may also be considered.

(8) **What is a transferable skills analysis?** It is a systematic study of the transferable skill or skills a worker has demonstrated to see if that skill set makes him/her employable.

(9) **What are job modifications?** Job modifications are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of job modification benefits is to encourage employers to modify jobs to retain or hire injured workers. Job modifications are used when an employer-employee relationship exists, and they may include worksite adjustment; job restructuring; and/or tools, equipment or appliances.

(10) **What are prejob accommodations?** Prejob accommodations are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of prejob accommodation benefits is to make it possible for the worker to perform the essential functions of a job. Accommodations are used when an industrially injured or ill worker is engaged in a vocational rehabilitation plan or in a job search, and they may include tools, equipment or appliances.

[Statutory Authority: RCW [51.04.020](#), [51.04.030](#), [51.32.095](#), [51.36.100](#), [51.36.110](#). 03-11-009, § 296-19A-010, filed 5/12/03, effective 2/1/04; 00-18-078, § 296-19A-010, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-070 What is an ability to work assessment?

(1) The AWA report must include an evaluation of the industrially injured or ill worker's:

(a) Age, education and experience;

(b) Transferable skills;

(c) Preexisting physical and mental conditions and the effect of those conditions on the worker's employability;

(d) Physical and mental conditions proximately caused by the worker's industrial injury or occupational disease and the effect of those conditions on the worker's employability;

(e) Wage at the time of injury;

(f) Work pattern;

(g) Significant barriers to employment;

(h) Labor market;

(i) Complete work history, addressing any gaps in employment, in addition to information about education level, courses or transcripts, licenses, certifications or registrations that the worker may have obtained in the past; and

(j) The report must address the first four return to work priorities set forth in RCW 51.32.095(2).

(2) The AWA must also include one of the following recommendations:

(a) Able to work: The injured worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis. When this is not obtainable, medically approved physical capacities information regarding the worker's ability to perform the job may be used; and

(iii) Labor market information supporting the provider's recommendation. Labor market information is not necessary when the injured worker is medically released to work for their job of injury at their previous work pattern;

(b) Further services appropriate: Vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment. The report must include:

(i) An analysis demonstrating how vocational rehabilitation plan development services are necessary and likely to enable the injured worker to become employable at gainful employment;

(ii) The specific return to work possibilities investigated and the reasons why they were ruled out including labor market information when necessary; or

(c) Further services not appropriate: The injured worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational rehabilitation services are not appropriate;

(ii) Identifying barriers that will make it unlikely the worker will benefit from vocational rehabilitation services, consistent with the requirements in WAC 296-19A-010(1);

(iii) Medical, labor market, and/or other information, as necessary, supporting the provider's recommendations.

(d) Return to work: The injured worker has returned to work. The report must specify and/or document attempts to obtain the following information:

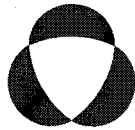
(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work;

(iv) The worker's monthly wages.

(3) The provider must immediately inform the department orally if the worker has returned to work or if the provider has documentation that the worker is medically released without restrictions or has returned to work. The provider must follow the oral notification with written notification within two working days. The provider must attach documentation showing the worker was medically released to work without restrictions. Except for completing the closing report, the provider should not perform any other work on the AWA without the prior authorization of the referral source.



Washington State Department of
Labor & Industries

November 2007

To: Vocational Providers who are assigned to a currently open Plan Development vocational referral

Re: Workers who wish to begin a re-training plan in January 2008

The Department of Labor and Industries, in coordination with our stakeholders, is implementing a number of changes to vocational rehabilitation based on legislation passed earlier this year. The changes offer expanded opportunities for eligible workers: time and money for retraining programs are expanded and workers may select an alternative option rather than participating in a plan. The alternative, or option 2, provides a vocational award and the ability to use tuition benefits for five years. When a worker selects option 2, the claim is closed.

In addition, employers can offer a job within 15 days of the plan development referral that stops further vocational plan services. These changes apply to plans approved on or after January 1, 2008.

For workers and their employers who are in plan development currently, we want to appropriately implement these changes without unnecessary delays. To do this, we need your help in identifying workers who are likely to have a training goal and plan identified and who wish to pursue training beginning in January 2008.

If you anticipate your client will have a training goal and be ready to start a re-training program during January 2008, please contact your Vocational Services Consultant (VSC) immediately. The VSC will provide information about steps to take to help insure that your client is able to begin his or her program.

In these cases, the department will contact the worker's employer to determine whether they understand the new vocational benefits and options and whether they wish to offer work. For those workers whose employers do not choose to offer work, the department will work with you to ensure timely review and communication so the worker may start his or her plan on time.

If you have questions about the information presented here, please contact your VSC. For more information about the upcoming changes to vocational services, please visit www.ImproveVoc.Lni.wa.gov.

Thank you for your assistance in working with us to provide timely vocational services.