

RCW 51.32.220 Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions. (1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8) (a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal. [2007 c 255 § 1; 2005 c 198 § 1; 2004 c 92 § 1; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Applicability—1979 ex.s. c 231: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

Severability—1979 ex.s. c 231: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

Applicability—1979 ex.s. c 151: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

Severability—1979 ex.s. c 151: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.