

Social Security Offset

Report to the Legislature

as required by Chapter 198, Laws of 2005

December 2006



Introduction

The purpose of this report is to respond to legislation that passed the 2005 Legislature. In Substitute House Bill 1732 [Chapter 198, Laws of 2005 Section 1 (8)(d)], among other changes, the Legislature directed L&I to report on benefit adjustments. It read:

By December 1, 2006, the department must report to the appropriate committees of the legislature concerning the benefit adjustments authorized in this subsection and must include information about similar benefit adjustments, if any, authorized in other states with social security disability benefit offset requirements. The report must include recommendations on whether additional statutory changes might be warranted in light of the actions of the federal social security administration.

Brief Summary

Substitute House Bill 1732 required the Department of Labor and Industries (L&I), or a self-insured employer, to retroactively adjust the amount of time-loss compensation benefits on closed claims when:

- These benefits had been paid at a reduced rate due to the worker's receipt of Social Security disability benefits; and
- The Social Security Administration had assessed an overpayment for this retroactive period because of the worker's entitlement to benefits from L&I.

A relatively small number of these claims were reported, and all cases involved the State Fund (no self-insured claims required benefit adjustments). For the 19 claims in which additional payments were appropriate, the total amount paid was \$251,287.41.

The department's recommendation for additional statutory change is to permanently adopt the ability to make benefit adjustments on closed claims in these limited situations.

Background

Washington's workers' compensation law includes combined benefit limits for injured workers who are entitled to time-loss compensation or pension benefits and also receive Social Security disability payments. This limitation, known as the "Social Security offset" provision, applies to workers who are simultaneously entitled to these benefits until age 65.

Social Security law contains a similar offset provision. States were allowed to preempt the federal benefit reductions by adopting their own offset statutes until 1981. Before Congress took action to eliminate the ability for states to take advantage of these potential savings in workers' compensation funds, 14 states had passed such laws.

The original offset provisions of both the Social Security Administration and the State of Washington required the combined benefit limit stop at age 62. Based on legislative and congressional action, both the Washington industrial insurance statute and the federal Social Security laws were changed to allow the adjustments until age 65. Today, the federal agency is to make any necessary benefit reductions when the worker is between ages 62 and 65 (typically, the workers' compensation benefits have been reduced prior to the worker reaching age 62). To avoid the potential of workers receiving more in combined payments than allowed under the two laws, Labor and Industries does not stop the offsetting of benefits until confirmation is received that the federal agency has applied the combined benefit limit for a worker after age 62.

The Social Security Administration began auditing its payment records and discovered many cases where it believes it should have reduced payments to injured workers. These audits result in significant overpayments going back several years that are being assessed to injured workers. In many situations, the department or self-insurer is able to make any necessary adjustments in the worker benefits based on the federal agency's actions because the claim is open, or the worker was entitled to pension payments for the time period involved. However, some of the claims are now closed, and there is no ability for L&I or the self-insurer to adjust its payments to injured

workers. The injured worker, therefore, bears the burden of repaying the Social Security Administration even though the benefit they received was not in excess of the combined limit. It is these cases that prompted the passage of Substitute House Bill 1732.

Benefit Adjustments Authorized by the Legislature

Substitute House Bill 1732 allowed the department or self-insurer to make adjustments in workers' compensation benefits on closed claims if the worker submitted a written request for the adjustment, along with documentation of an overpayment assessment by the federal agency. Since the passage of Substitute House Bill 1732, L&I has repaid benefits in 19 State Fund workers' compensation cases. No requests for adjustment were received by the agency in any self-insured cases.

The benefits paid totaled \$251,287.41, of which \$181,521.53 was provided from the Accident Fund and \$69,767.01 from the Supplemental Pension Reserve Fund. The largest adjustment totaled \$38,831.15; the smallest, \$2,679.66. The oldest time period for which the federal agency assessed an overpayment was July 1, 1992 through April 30, 1994.

In addition to these 19 cases, L&I or self-insurer adjusted benefits in 11 claims which did not require the authorization of Substitute House Bill 1732. These claims were open or the worker was entitled to pension benefits for the period involved.

Agency staff also reviewed 90 State Fund claims for injured workers who became 62 years of age in Fiscal Years 2005 and 2006. This review indicates that, in many cases, the Social Security Administration has not yet calculated benefit adjustments due to the worker's age. The results are shown in the following table:

Number of Claims	Status
60	Workers receiving reduced benefit from L&I. Social Security Administration is paying full benefits and has made no inquiry concerning the status of the workers' compensation benefits.
19	Workers opted to take early Social Security retirement

	benefits, which are offset by L&I only.
6	Federal benefit reduction due to entitlement to workers' compensation payments is pending with Social Security Administration.
5	Workers' compensation benefits have been adjusted due to Social Security Administration's application of the offset.

Similar Adjustments Authorized in Other States

The workers' compensation statutes of 14 states, including Washington, contain provisions concerning combined benefit limits for workers receiving both Social Security disability and workers' compensation payments. The other states are: California, Colorado, Florida, Louisiana, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, and Wisconsin. Ten of the 14 states end the combined benefit limit when the worker reaches age 62; one only considers 50 percent of the worker's initial Social Security award and does not offset for ongoing federal disability benefits. In these jurisdictions, the problem of retroactive adjustments and overpayments by the federal agency are not an issue.

For the two remaining states, the retroactive adjustments by the Social Security Administration could create situations similar to those experienced in Washington. In New Jersey, a notice is provided to the federal agency when the worker is approaching age 62 to make sure the federal benefits are appropriately reduced. They report that this process seems to avoid any subsequent overpayment assessments and adjustments.

Oregon only applies the combined benefit limit in total permanent disability pension cases. To date, we have been unable to ascertain whether retroactive adjustments by the federal agency present any difficulties for them in correcting the state benefits.

Recommendations for Additional Statutory Change

There are two options for addressing the issue of retroactive benefit adjustments by the Social Security Administration due to the workers' receipt of simultaneous federal and state disability payments:

1. Amend RCW 51.32.220 to stop the combined benefit limit when the worker becomes 62 years of age, or
2. Continue the ability to adjust benefits on closed claims as provided by Substitute House Bill 1732.

The first option is the simplest to administer, but could result in workers receiving full benefits from both Social Security and workers' compensation when the federal agency fails to apply the combined benefit limit. The data for workers who have become 62 years of age during the past two fiscal years indicates a potential that Social Security may not apply the combined benefit limit in every case. This outcome is contrary to the intent of both the federal and state offset laws.

The second option allows the department or self-insurer to continue appropriately adjusting benefits on a case-by-case basis. While this results in additional calculations, the number of cases involved is relatively small. This approach also allows the benefit savings due to the offset provisions to be realized by the workers' compensation funds unless action is taken by the Social Security Administration.