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 must 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 (6) of this section as appropriate. An injured worker may not participate in vocational rehabilitation under this section if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid must be recovered according to the terms of that section.

(2)(a) To help injured workers maintain and build labor market readiness skills during vocational services in the sole discretion of the supervisor or supervisor's designee, funds may be payable to a department-approved training provider as defined by department rule, so that courses may be available for basic skills development.

(b) Participation in basic skills development is optional for the worker.

(c) Funds may pay for but are not limited to:

(i) English language training;

(ii) Basic computer literacy;

(iii) General education development or high school equivalency training;

(iv) Technology or software needed to effectively participate in basic skills development;

(v) Tutoring for approved basic skills training;

(vi) Other skills that prepare an injured worker for gainful employment.

(d) Travel and accommodation expenses are not payable under (c) of this subsection.

(e) These funds are available once per claim equal to 25 percent of the maximum funding available for vocational retraining defined in RCW 51.32.096(4)(d). Use of these funds for basic skills development does not reduce funds that are available for a formal retraining plan.

(i) Funds must be paid directly to training providers or to vendors to procure necessary equipment or assistance, and may not be paid directly to the worker.

(ii) Self-insured employers must pay for the costs of basic skills development for their injured workers independently from this fund.

(f) Eligibility of training for this funding is based upon a recommendation from the assigned vocational rehabilitation counselor, and approval at the sole discretion of the supervisor of industrial

insurance or their designee to ensure the proposed training is consistent with basic skills development as used in this section.

(g) The injured worker's knowledge and skills gained through basic skills development may not be construed as acquisition of transferable skills under subsection (3)(f) of this section, and does not disqualify the injured worker from being found eligible for continued vocational rehabilitation services or retraining programs available under this title. Payment for the costs of basic skills training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by this section.

(h) Injured workers may finish specific courses that were approved and paid in full prior to vocational referral closure or claim closure. Otherwise funding for this type of skills development ends when the vocational referral closes or the claim closes.

(i) This funding is not associated in any way with eligibility for temporary total disability benefits or any vocational services.

(j) A worker's eligibility for or participation in basic skills development does not preclude the employer of injury's right to offer work under RCW 51.32.090(4) or to offer work consistent with the priorities identified in subsection (3) of this section.

(3) Vocational rehabilitation services may be provided to an injured worker 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. In determining whether to provide vocational services and at what level, the following list must be used, in order of priority with the highest priority given to returning a worker to employment:

(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.

(4) Notwithstanding subsection (3) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services under this subsection are not eligible for option 2 benefits, as provided in RCW 51.32.096.

(5) To encourage the employment of individuals who have suffered an injury or occupational disease resulting in permanent disability

which may be a substantial obstacle to employment, the supervisor or supervisor's designee, in his or her sole discretion, may provide assistance including job placement services for eligible injured workers who are receiving vocational services under the return-to-work priorities listed in subsection (3)(b) through (i) of this section, except for self-employment, and to employers that employ them. The assistance listed in (a) through (f) of this subsection is only available in cases where the worker is employed:

(a) Reduction or elimination of premiums or assessments owed by employers for such workers;

(b) Reduction or elimination of charges against the employers in the event of further injury to such workers in their employ;

(c) Reimbursement of the injured worker's wages for light duty or transitional work consistent with the limitations in RCW 51.32.090(4)(c);

(d) Reimbursement for the costs of clothing that is necessary to allow the worker to perform the offered work consistent with the limitations in RCW 51.32.090(4)(e);

(e) Reimbursement for the costs of tools or equipment to allow the worker to perform the work consistent with the limitations in RCW 51.32.090(4)(f);

(f) A one-time payment of $25,000 for continuous employment without reduction in base wages for at least 12 months. The 12 months begin the first date of employment and the one-time payment is available at the sole discretion of the supervisor of industrial insurance;

(g) The benefits described in this section are available to a state fund employer without regard to whether the worker was employed by the state fund employer at the time of injury. The benefits are available to a self-insured employer only in cases where the worker was employed by a state fund employer at the time of injury or occupational disease manifestation;

(h) The benefits described in (a) through (f) of this subsection (5) are only available in instances where a department-employed vocational rehabilitation professional has determined that the worker has returned to work that is reasonably consistent with the worker's restrictions.

(6)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed $3,000 in any 52 week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) Beginning with vocational rehabilitation plans approved on or after July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed $4,000 in any 52 week period, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than 52 weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional 52 weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging must also be paid.

(e) Costs paid under this subsection must be chargeable to the employer's cost experience or must be paid by the self-insurer as the case may be.

(7) In addition to the vocational rehabilitation expenditures provided for under subsection (6) of this section, an additional $10,000 may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending provider must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 may not exceed $10,000.

(8) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections (6) and (7) of this section.

(9) The department must establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations. The state fund must make referrals for vocational rehabilitation services based on these performance criteria.

(10) The department must engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section including participation by the department as a partner with WorkSource and with the private vocational rehabilitation community to refer workers to these vocational professionals for job search and job placement assistance. As a partner, the department must place vocational professional full-time employees at selected WorkSource locations who will work with employers to market the benefits of on-the-job training programs and preferred worker financial incentives as described in subsection (5) of this section. For the purposes of this subsection, "WorkSource" means the established state system that administers the federal workforce investment act of 1998.

(11) The benefits in this section and RCW 51.32.096 must be provided for the injured workers of self-insured employers. Self-insurers must report both benefits provided and benefits denied in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon

his or her own initiative or at any time that a dispute arises under this section or RCW 51.32.096, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(12) Except as otherwise provided, the benefits provided for in this section and RCW 51.32.096 are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims may not be reopened solely for vocational rehabilitation purposes. [2024 c 90 s 2; 2023 c 171 s 8; 2018 c 22 s 13. Prior: 2015 c 137 s 2; 2013 c 331 s 1; 2011 c 291 s 1; (2007 c 72 s 1 expired June 30, 2016); 2004 c 65 s 10; 1999 c 110 s 1; prior: 1996 c 151 s 1; 1996 c 59 s 1; 1988 c 161 s 9; 1985 c 339 s 2; 1983 c 70 s 2; 1982 c 63 s 11; 1980 c 14 s 10; prior: 1977 ex.s. c 350 s 48; 1977 ex.s. c 323 s 16; 1972 ex.s. c 43 s 23; 1971 ex.s. c 289 s 12.]

Effective date—2024 c 90: See note following RCW 51.32.090.

Effective date—Retroactive application—2023 c 171: See note following RCW 51.04.050.

Explanatory statement—2018 c 22: See note following RCW 1.20.051.

Application—2015 c 137 ss 1, 2, and 6: See note following RCW 51.16.120.

Rules—2015 c 137: See note following RCW 51.32.096.

Effective date—2013 c 331: "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 takes effect immediately [May 21, 2013]." [2013 c 331 s 8.]

Implementation—2007 c 72: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 72 s 4.]

Effective date—2007 c 72: "This act takes effect January 1, 2008." [2007 c 72 s 5.]

Expiration date—2013 c 331; 2007 c 72: "This act expires June 30, 2016." [2013 c 331 s 5; 2007 c 72 s 6.]

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

Effective date—1999 c 110 s 1: "Section 1 of 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 takes effect July 1, 1999." [1999 c 110 s 3.]

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased

costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 s 1.]

Severability—1985 c 339: "If any provision of this 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." [1985 c 339 s 6.]

Severability—1983 c 70: "If any provision of this 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." [1983 c 70 s 5.]

Effective dates—Implementation—1982 c 63: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective dates." [1982 c 63 s 26.]

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