# House Bill 4138 -- Injured Worker Parity Bill
# Severely Injured Workers are Crushed by Benefit Claw Backs.

**The Problem – Claw backs of benefits by insurance companies are crushing to workers with severe injuries.** Injured workers rely on workers compensation benefits to replace their wages when they are unable to work, and to compensate them for a permanent loss of physical capacity. When the insurer announces an overpayment that accrued through no fault of the worker, and suddenly starts to claw back benefits, the worker has very limited ability to challenge or plan for those changes under the current system.

## How the System Works Today

When a worker is injured on the job, the doctor may place work restrictions on the worker – either light duty or no work at all. The insurer makes regular payments to replace the resulting loss of wages (aka time loss or temporary disability payments). When the doctor says the worker has reached maximum improvement, the entitlement to temporary payments stops, and any further wage loss payments offset future benefits. The compensation the worker was to have received for permanent loss of physical capacity, which is determined under a formula set by law, is often slashed.

The problem arises when the doctor concludes **in hindsight** that the worker was stationary months before, which enables the insurer to subtract all payments made after the stationary date from the workers' impairment compensation. This can unexpectedly deprive workers with a serious disability of the funds they were counting on to rebuild their lives. A second problem arises when the insurer fails to notify the worker of deficiencies in the work restrictions until after the deadline for the worker to correct those deficiencies.

### What Does the Injured Worker Parity Bill Do?

- **The bill requires insurers to notify injured workers when the temporary payments are ending**. (656.262(4)(j)). Under current law, the worker may not find out that there is a problem with the work restrictions until a check does not show up. This deprives the worker of the ability to correct the issue or plan for the change.

- **The bill extends the time period for which workers can get backdated work restrictions from 14 days to 60 days after notice has been given by the insurer.** Under current law, workers who discover an error in their work restrictions can only get the restrictions revised for the preceding two weeks. (652.262(4)(g)). The worker may be notified that benefit payments were in error long after the fact. If a mistake has been made with the work restrictions, then the worker should have reasonable time to correct the error from the date they receive notice.

- **The bill provides an exception to the backdating restriction for periods where the claim is in litigation.** When medical benefits are being contested, the worker should not be required to incur medical costs just to keep work restrictions up to date for purposes of potential benefits. The bill would allow the worker to obtain their work restrictions after successful litigation.

- **The bill protects workers when doctors create an overpayment of temporary payments by backdating the date the worker reached maximum improvement.** Under current law, the workers' doctor is responsible for assigning the date of maximum improvement. When the date given is months before the worker is notified, the wage loss payments for the past months suddenly become an overpayment. The bill would limit backdating the medically stationary date to the same 60 days it would allow the worker to obtain backdated work restrictions.

- **The bill gives workers and insurers the same amount of time to discover errors. (656.319(6)).** Under current law, an injured worker can only challenge claim processing errors for two years after they occur. Insurers have an unlimited amount of time to claw back benefits paid due to claim processing errors. The bill would remove the two-year limitation on worker challenges to benefit payments.

- **If a worker is hurt badly enough that they suffer a permanent disability, their final payment cannot be reduced to recover an overpayment by more than 50%. (656.268(16)).** Under current law, the insurer can take back all of the worker's permanent impairment compensation to recover an overpayment. In contrast, only 50% can be withheld for delinquent child support. The same limitations should apply to both so a worker is guaranteed to receive at least some compensation specifically for their permanent loss of physical capacity.

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