

1 **HB 2158** - H AMD
2 By Representative Chandler

3 Strike everything after the enacting clause and insert the
4 following:

5 "Sec.1. RCW 51.08.178 and 1988 c 161 s 12 are each amended to read as
6 follows:

7 (1) "Wages" means:

8 (a) The gross remuneration paid in cash by the employer to the worker for
9 service performed with respect to a pay period before any deductions. "Paid in
10 cash" means payment in cash, by check, by electronic transfer, or by other means
11 made directly to the worker;

12 (b) Tip only to the extent that the tips are reported to the employer for federal
13 income tax purposes;

14 (c) The average monthly value of any bonus received from the employer in the
15 twelve months immediately preceding the worker's injury or manifestation of
16 occupational disease;

17 (d) The actual cash value of board housing and fuel received from the employer
18 as part of the contract of hire and for which an internal revenue service form 1099
19 is required. This subsection (1) (d) shall not apply during any period in which the
20 employer continues to provide through a past or current payment, board housing,
21 and/or fuel that were provided to the worker at the time of injury or manifestation of
22 occupational disease and

23 (e) The cost to the employer as of the date of injury or manifestation of
24 occupational disease for insurance for medical vision and dental treatment. This
25 subsection (1) (e) shall not apply during any period in which the employer continues
26 to provide the worker with the same level of insurance for medical vision and dental
27 treatment as was provided at the time of injury or manifestation of occupational
28 disease.

29 (2) "Wages" does not include:

30 (a) Overtime pay, except in cases under subsection (4) of this section or

31 (b) Fringe benefits. Fringe benefits are any consideration to a worker in
32 addition to wages as defined in subsection (1) of this section, including but not
33 limited to: Retirement and financial benefit plans of whatever

1 nature; life, disability, and wage-replacement insurance of
2 whatever nature; unused, accrued leave of whatever nature;
3 memberships of whatever nature; employee discounts or use or
4 consumption of employer services, materials, equipment, and
5 facilities of whatever nature; training and education of whatever
6 nature; and other employee or beneficiary benefit plans for the
7 employee's or beneficiaries' benefit resulting from the employment
8 relationship.

9 (3) ~~(a)~~ For the purposes of this title, the monthly wages the worker was receiving
10 from all employment at the time of injury shall be the basis upon which compensation
11 is computed unless otherwise provided specifically in the statute concerned. In cases
12 where the worker's wages are not fixed by the month, they shall be determined by
13 multiplying the daily wage the worker was receiving at the time of the injury:

14 ((a)) By five, if the worker was normally employed one day a week;

15 ((b)) By nine, if the worker was normally employed two days a week;

16 ((c)) By thirteen, if the worker was normally employed three days a week;

17 ((d)) By eighteen, if the worker was normally employed four days a week;

18 ((e)) By twenty-two, if the worker was normally employed five days a week;

19 ((f)) By twenty-six, if the worker was normally employed six days a week;

20 ((g)) By thirty, if the worker was normally employed seven days a week.

21 ((The term "wages" shall include the reasonable value of board, housing, fuel,
22 or other consideration of like nature received from the employer as part of the contract
23 of hire, but shall not include overtime pay except in cases under subsection (2) of this
24 section. However, tips shall also be considered wages only to the extent such tips
25 are reported to the employer for federal income tax purposes.))

26 (b) For the purposes of this subsection (3), the daily wage shall be the hourly
27 wage multiplied by the number of hours the worker is normally employed. The
28 number of days and hours the worker is normally employed shall be determined by the
29 department in a fair and reasonable manner, which may include averaging the number
30 of days worked per week and hours worked per day.

31 ((2)) In cases where (a) the worker's employment is exclusive, or a seasonal
32 nature or (b) the worker's current employment or his or her relation to his or her
33 employment is essential, part-time or intermittent, the monthly wage shall be
34 determined by dividing by twelve the total wages earned, including overtime from all
35 employment in any twelve successive calendar months preceding the injury, which
36 fairly represent the claimant's employment pattern.

37 ((3)) Within the twelve months immediately preceding the injury, the worker
38 has received from the employer at the time of injury bonus as part of the contract

1 of hire, the average monthly value of such bonus shall be included in determining the
2 worker's monthly wages.))

3 ((4)) (5) In cases where a worker's wage has not been fixed or cannot be
4 reasonably and fairly determined, the monthly wage shall be computed on the basis
5 of the usual wage paid to other employees engaged in like or similar occupations where
6 the wages are fixed.

7 **Sec. 2.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each
8 amended to read as follows:

9 ((If change of circumstances warrants an increase or
10 rearrangement of compensation, like application shall be made
11 therefor.)) Where the worker's application to reopen a claim has
12 been granted under RCW 51.32.160, compensation and other benefits
13 if in order shall be allowed for periods of time up to sixty days
14 prior to the receipt of such application.

15 **Sec. 3.** RCW 51.28.055 and 1984 c 159 s 2 are each amended to read as
16 follows:

17 (1) Except as provided in subsection (2) of this section, claims for occupational
18 disease or infection to be valid and compensable must be filed within two years
19 following the date the worker had written notice from a physician: ((1) (a) Of the
20 existence of his or her occupational disease and ((2) (b) that a claim for disability
21 benefits may be filed. The notice shall also contain a statement that the worker has
22 two years from the date of the notice to file a claim. The physician shall file the
23 notice with the department. The department shall send a copy to the worker and to
24 the self-insurer, the worker's employer, or self-insured. However, a claim is valid if
25 it is filed within two years from the date of death of the worker suffering from an
26 occupational disease.

27 (2) (a) Except as provided in (b) of this subsection, to be valid and compensable,
28 claims for hearing loss due to occupational noise exposure must be filed within two
29 years after the date of the worker's last injurious exposure to occupational noise in
30 employment covered under this title or within one year after the effective date of this
31 section, whichever is later.

32 (b) A claim for hearing loss due to occupational noise exposure that is not timely
33 filed under (a) of this subsection may be allowed only for medical aid benefits under
34 chapter 51.36 RCW.

35 NEW SECTION. **Sec. 4.** (1) A joint select committee on workers' compensation is
36 established. The joint select committee shall consist of the following members:

1 (a) One member from each of the two largest caucuses of the senate, appointed by the
2 president of the senate; and

3 (b) One member from each of the two largest caucuses of the house of representatives,
4 appointed by the speaker of the house of representatives.

5 (2)(a) By September 12, 2003, the committee shall complete a review, working with
6 information from national workers' compensation organizations and individual states, to identify
7 how other states address the following:

8 (i) Methods for calculating temporary total disability benefits, including: Flat rate, annual
9 averaging, and maximum and minimum rates; the inclusion of worker fringe benefits in the
10 calculation of temporary total disability or other workers' compensation benefits; whether and
11 using what methods the calculation of benefits account for banked hours; and options used by
12 other states to address seasonal and intermittent employment issues;

13 (ii) Retraining and related vocational rehabilitation options that are available to injured
14 workers;

15 (iii) Immediate payment and compromise and release options that the parties are permitted
16 to use;

17 (iv) The administration and oversight of self-insured claims and options for greater state
18 fund employer and claimant involvement in the management of claims;

19 (v) Oversight and control options, and compensation options, in the administration of
20 independent medical examinations; and oversight and control options used by other states to
21 manage attending physicians; and

22 (vi) Rate setting by other state funds.

23 (b) In selecting the states to be compared, the committee shall select states that are
24 geographically comparable to Washington, states that have state funds comparable to
25 Washington, and states that are Washington's chief competitors for future economic growth.

26 (3) The committee, where feasible, may consult with individuals from the public and
27 private sector or ask such persons to establish an advisory committee.

28 (4) The committee shall use legislative facilities and staff from senate committee services
29 and the office of program research.

30 (5) The committee shall report its findings and recommendations to the legislature by
31 December 5, 2003.

32 ~~NEW SECTION. Sec.5. The department of labor and industries may adopt such~~
33 ~~rules as may be necessary to implement sections 3 through 3 of this act.~~

34 ~~NEW SECTION. Sec.6. Section 4 of this act expires April, 2004.~~

1 NEW SECTION. Sec. 7. This act is necessary for the immediate preservation
2 of the public peace, health or safety or support of the state government and its
3 existing public institutions and takes effect July 1, 2003."

4 Correct the title.

EFFECT: Deletes the provisions of the underlying bill and adds the following:

- (1) Defines "wages" to mean gross cash remuneration paid to the worker, including reported tips, bonuses, the cash value of board, housing, and fuel, and the cost of insurance for medical, vision, and dental treatment. "Wages" does not include overtime pay (except when calculating wages for seasonal or intermittent workers) or fringe benefits of any kind.
- (2) Deletes the provision allowing workers to apply for adjusted benefits because of a "change in circumstance."
- (3) Requires claims for hearing loss due to occupational noise exposure to be filed within two years after the last injurious exposure or one year after the bill's effective date, whichever is later. A claim that is not timely filed may be allowed only for medical benefits.
- (4) Establishes a Joint Select Committee to identify and review how other states address methods for calculating benefits, retraining and vocational benefits, compromise and release options, oversight of self-insurance claims and employer/worker involvement in state fund claims, oversight of independent medical examinations, and rate setting by other state funds. The committee must complete its review by September 1, 2003, and report findings and recommendations to the Legislature by December 5, 2003.
- (5) Adds an emergency clause with a July 1, 2003, effective date.