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Commerce & Labor Committee

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HB 1606

**Brief Description:** Modifying industrial insurance wage provisions.

**Sponsors:** Representative Conway; by request of Department of Labor & Industries.

**Brief Summary of Bill**

- Changes the calculation of industrial insurance benefits, including changing the definition of wages to exclude fringe benefits except health benefits, allowing 12-month wage averaging for temporary workers, and using a flat 67 percent instead of a variable percentage of the worker's wage at injury.

**Hearing Date:** 2/17/03

**Staff:** Chris Cordes (786-7103).

**Background:**

Workers injured in the course of employment may receive various benefits under the Industrial Insurance Act. Compensatory benefits (time-loss, pension, and survivor benefits) for injured workers or their surviving beneficiaries are based on the monthly wages that the worker was receiving from all employment at the time of injury.

Definition of Wages

For most purposes, wages include:

- the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer;
- health care benefits (except during the periods the employer continues to provide it), valued at the employer's cost, under a decision by the Washington Supreme Court in *Cockle v. Department of Labor and Industries*;
- tips reported for federal income tax purposes; and
- the average monthly value of bonuses received from the employer in the preceding 12 months.

Overtime pay is not included, but under rules adopted by the Department of Labor and

Industries (Department), overtime hours are included at the regular pay rate.

For workers who are exclusively seasonal or whose relationship with their employment is essentially part-time or intermittent, the same wage definition is used, except that overtime is included at the overtime pay rate.

#### Calculation of Monthly Wages

Compensatory benefits are based on the injured worker's monthly wage. If the employee's wages are not fixed by the month, the daily wage (the wage rate times the number of hours normally worked) is multiplied by a statutory formula to obtain the monthly amount. The number of hours worked per day may be averaged to obtain the number of hours the worker "normally worked."

For seasonal or intermittent workers, monthly wages are determined by dividing by 12 the total wages earned, including overtime, in all employment in the 12 successive months preceding the injury. To determine whether a worker is an intermittent worker under the Washington Supreme Court's decision in *Avundes v. Department of Labor and Industries*, the Department or self-insurer must look at the type of work being performed and the relationship of the worker to the employment, including the worker's intent, the relation to the current employer, and the worker's work history.

#### Calculation of Benefit Amounts

Time-loss or pension benefits are calculated as a percentage of the worker's monthly wages, subject to a maximum cap, as follows:

- the worker's monthly wage at injury is multiplied by a percentage ranging from 60 to 75 percent, depending on the worker's marital status and number of children;
- the minimum monthly benefit ranges from \$185 to \$352, depending on the worker's marital status and number of children; and
- the maximum benefit is 120 percent of the state average monthly wage (\$3,722 as of July 1, 2002).

Time-loss benefits for an injured worker's child who is not in the worker's custody may be paid only to the person actually providing the child's support.

Benefits, similar to pension benefits, are paid to the surviving spouse and children, or other dependents if there is no surviving spouse or children. These benefits are calculated as follows:

- the worker's monthly wage at injury is multiplied by a percentage ranging from 60 to 70 percent, depending on the number of children;
- the minimum monthly benefit ranges from \$185 to \$322, depending on the number of children; and
- the maximum benefit is 120 percent of the state average monthly wage (\$3,722 as of July 1, 2002).

#### Change in Circumstances

A worker may apply for an increase in compensation if a change in circumstances warrants it. If the application is granted, compensation is allowed for periods up to 60 days before the application was received.

### **Summary of Bill:**

Changes are made in the definition of wages and the calculation of compensatory benefits under the Industrial Insurance Act.

#### Definition of Wages

The definition of wages is modified to include health benefits, but not other fringe benefits, and to exclude "other consideration of like nature." Specifically, wages include:

- gross cash wages paid for services performed;
- the reasonable value of board, housing, and fuel received from the employer (except during the periods an employer continues to provide these);
- medical, dental, and vision benefits (except during the periods the worker continues to receive them), the value to be fixed on the date the worker applies for benefits and, for claims filed on or after the bill's effective date, initially valued at \$373 per month with annual indexing thereafter on July 1;
- tips reported for federal income tax purposes; and
- the average monthly value of bonuses received from the employer in the preceding 12 months.

Wages do not include other fringe benefits, such as retirement, life insurance, training, disability, profit sharing or stock options, or other employee benefit plan.

#### Calculation of Monthly Wages

When a daily wage rate must be calculated, both the number of days worked per week and the number of hours worked per day may be averaged to determine the days and hours that the worker "normally worked."

Provisions relating to exclusively seasonal or essentially part-time or intermittent workers are deleted. New provisions for temporary workers are included. Temporary workers are those:

- whose employment relationship with the employer of injury was reasonably expected to end on completion of a specific job or on a specific date; and
- who were employed less than 195 working days in the previous 12 months.

The daily wage calculation does not apply to temporary workers. For temporary workers, the monthly wages of temporary workers are determined by dividing by 12 the total wages earned, including overtime, in all employment in the highest 12 successive months of the three years preceding the injury or disease manifestation.

#### Calculation of Benefit Amounts

Time-loss and pension benefit calculations are changed for claims filed after June 30, 2004,

as follows:

- the percentage multiplier is fixed at 67 percent (without regard to dependents); and
- the minimum benefit is changed from a range of \$185 to \$352 to a fixed amount of \$352.

For claims filed after June 30, 2004, time loss benefits for an injured worker's child who is not in the worker's custody no longer must be paid only to the person actually providing the child's support.

The minimum survivor benefit for claims filed after June 30, 2004, is changed from a range of \$185 to \$322 to a fixed amount of \$352.

#### Change in Circumstances

The "change in circumstances" language is deleted. If a workers' application to reopen a claim is granted, compensation is allowed for periods up to 60 days before the application was received.

**Rules Authority:** The bill contains provisions addressing the rule-making powers of the Department of Labor and Industries.

**Appropriation:** None.

**Fiscal Note:** Requested on February 11, 2003.

**Effective Date:** The bill takes effect ninety days after adjournment of session in which bill is passed.