
Commerce & Labor Committee

HB 1749

Brief Description: Simplifying and adding certainty to the calculation of workers' compensation benefits.

Sponsors: Representatives Condotta, Chandler and Crouse.

Brief Summary of Bill

- Changes the calculation of industrial insurance benefits, including changing the definition of wages to exclude fringe benefits, establishing an initial payment period, using 12-month wage averaging, and using a flat 66 and 2/3 percent instead of a variable percentage of the worker's wage at injury.

Hearing Date: 2/8/07

Staff: Sarah Beznoska (786-7109).

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

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- 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. 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 (for temporary or total permanent disability, respectively) 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.

Benefits, similar to pension benefits, are paid to the surviving spouse and children, or to 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.

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 exclude all fringe benefits. The reference to "other consideration of like nature" is removed from the statute.

Specifically, wages include:

- gross cash compensation paid for services performed;
- the actual value of board, housing, and fuel received from the employer as part of the contract of hire (except during the periods an employer continues to provide these through a past or current payment);
- the cash value of mental and physical health insurance received from the employer as part of the contract or hire (except during the period an employer continues to provide these through a past or current payment); and
- tips reported for federal income tax purposes.

Calculation of Monthly Wages

Provisions relating to determining wages for daily wage earners or for exclusively seasonal or essentially part-time or intermittent workers are removed from the statute. For all workers, an initial payment period is established. The initial payment period starts on the date the claim for injury or manifestation of occupational disease was filed and ends 12 consecutive weeks later.

During the initial payment period, monthly wages are total monthly wages, including cash bonuses and overtime pay, earned from all employment in the 30 days immediately preceding the pay period in which the injury or manifestation of occupational disease occurred. During the initial payment period, monthly wages are calculated using itemized pay statements from the 30 days preceding the pay period of the date of injury or manifestation of occupational disease. If itemized pay statements are not available from the employer or the worker for the full 30-day period, the Department of Labor and Industries (Department) must calculate the monthly wage using any available pay statements for the 30-day period. If no pay statements can be produced by the employer or the worker, the monthly wage is calculated based on the contract of hire as determined in a statement from the employer and the worker.

After the initial payment period is completed, monthly wage is calculated by averaging total wages earned from all employment, including cash bonuses and overtime pay, in the 12 consecutive months immediately preceding the month in which the injury or manifestation of occupational disease occurred.

If the worker has been employed less than 30 days at the time of injury or disease manifestation, whether self-employed or in employment that both the worker and the employer intend to be continuous and lasting without limit into the foreseeable future, and is earning wages greater than 150 percent of wages earned in the previous 12 months, then monthly wages are based on the usual wage paid other employees of the employer who perform like work or other employees in the worker's labor market performing like job duties with like work patterns.

Other Requirements During Initial Payment Period

During the initial payment period, the employer must, to the extent possible, continue to provide board, housing, fuel, and mental and physical health insurance, if these benefits were provided by the employer as part of the contract of hire. An employer must notify the Department if the employer cannot continue to provide these benefits, and the Department must adjust the worker's monthly wage calculation using the cash value of the benefit.

Calculation of Benefit Amounts

Time-loss and pension benefit calculations and survivor benefit calculations are changed for claims with a date of injury or disease manifestation after July 1, 2007, as follows:

- the percentage multiplier is fixed at 66 and 2/3 percent (without regard to dependents);
and
- the minimum benefit is changed from a range of \$185 to \$352 to a fixed amount of \$276.

Rules Authority: The Department may adopt rules to implement the new definition of wages.

Appropriation: None.

Fiscal Note: Requested on January 29, 2007.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2007.