

# HOUSE BILL ANALYSIS

## HB 2181

**Brief Description:** Defining intermittent employment for industrial insurance benefits.

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**Sponsors:** Representatives Boldt, McMorris, L. Thomas, and Mielke

Hearing: March 3, 1997

### **BACKGROUND:**

The industrial insurance law authorizes compensation for injured workers for the time lost from work because of an on-the-job injury or an occupational illness. With specified exceptions, the amount of compensation is calculated based on the worker's monthly wages from all employment at the time of injury.

An exception to this calculation applies to "exclusively seasonal" workers or workers whose current employment is intermittent or part-time. For these workers, the worker's monthly wage is computed by dividing by 12 the total wages, including overtime, earned in all employment in any 12 consecutive months preceding the injury that fairly represents the worker's employment pattern.

"Exclusively seasonal" and "intermittent" employment are not defined in statute. The Department of Labor and Industries has adopted a policy stating that (1) work is exclusively seasonal when work is entirely dependent on the seasons and no other work is performed by the worker and (2) intermittent employment is not regular or continuous in the future, may be full-time or part-time, and has definite starting and stopping points with recurring time gaps.

Two cases before the Washington Court of Appeals in 1996 dealt with these definitions. In the first, the court held that the determination of "seasonal" should not be focused on the job, but on the career pattern and work history. The worker was found to be a seasonal worker when the employment was intermittent and part-time, and was normally and exclusively related to a particular period of time.

The second case involved a school bus driver who worked for the school year but was paid her salary on a year-around basis. The court assumed that the department's definition of intermittent was correct for the purposes of the decision, but remanded the case to the department with instructions that the worker must be treated as either intermittent with

respect to both the job duties and the job pay, or as nonintermittent with respect to both.

**SUMMARY OF BILL:**

The requirements are modified for calculating industrial insurance compensation for "exclusively seasonal" workers or workers whose current employment is intermittent or part-time.

The reference to "exclusively seasonal" work is deleted. The calculation under the exception applies when the worker's employment at the time of injury is intermittent in nature or the worker's relationship to the employment at the time of injury is intermittent.

"Intermittent" is defined as employment which is full time, extra time, or part time, but is seasonal, noncontinuous, or temporary, and has recurring time gaps.

**RULES AUTHORITY:** The bill does not contain provisions addressing the rule-making powers of an agency.

**FISCAL NOTE:** Not requested.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill is passed.