
Commerce & Labor Committee

HB 1834

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

Sponsors: Representatives Chandler, Grant, Crouse, Holmquist and O'Brien.

Brief Summary of Bill

- Changes the calculation of industrial insurance benefits, including changing the definition of wages to exclude fringe benefits, using 12-month wage averaging, and using a flat 65.5 percent instead of a variable percentage of the worker's wage at injury.
- Requires benefit indexing using the Implicit Price Deflator rather than the Consumer Price Index or the state average annual wage.

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. 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 (\$3,722 as of July 1, 2002).

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 (\$3,722 as of July 1, 2002).

Vocational Rehabilitation Benefits

A worker may be eligible to receive up to \$4,000 in vocational rehabilitation benefits in a 52-week period when these benefits are necessary and likely to enable the worker to become employable at gainful employment. Benefits for an additional 52-week period may be authorized.

Other Benefit Issues

Time-loss benefits continue until the earning power of the injured worker is restored. If earning power is partially restored, the worker is entitled to loss-of-earning power benefits that are not more than 80 percent of the actual difference between the present wages and the preinjury earning power. Some courts have suggested that the worker's right to these benefits ends at "medical fixity" when the condition has stabilized to the point where no further medical treatment is necessary. However, other court decisions suggest otherwise, and Board of Industrial Insurance Appeals uses "legal fixity" as the ending point for these benefits. "Legal fixity" is reached on the date that the Department enters an order determining the extent of the worker's disability.

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

Monthly compensatory benefits that are being paid are revised annually for a cost-of-living adjustment based on changes in the state average monthly wage (SAMW). The SAMW is derived from the Employment Security Department's calculation of the state average annual wage.

Workers with permanent partial disabilities receive a statutory award. The amount is adjusted annually using the U.S. Consumer Price Index for Urban Wage Earners and Clerical Workers.

A worker with catastrophic injuries may have modifications made to his or her residence, with costs paid up to the state's average annual wage. Similarly, an injured worker who is an amputee or is paralyzed may have modifications made to his or her vehicle, with costs paid up to 50 percent of the state's average annual wage.

Change in Circumstances

A worker may apply for an increase in compensation if a change of circumstances warrants it. A worker may also apply to reopen a claim if the worker's condition has worsened within seven years after the claim's closure (or within 10 years if the claim involved loss of vision). If either application is granted, the Department allows compensation 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. Various annual indexing or cost-of-living adjustments must be made using the Implicit Price Deflator (IPD).

Definition of Wages

The definition of wages is modified to exclude all fringe benefits and "other consideration of like nature." 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); and
- tips reported for federal income tax purposes.

Wages do not include fringe benefits such as retirement and financial benefit plans, health and life insurance, disability and wage replacement benefits, training, leave of any nature, memberships, employee discounts, and other employee or beneficiary plan.

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 deleted. For all workers, monthly wages are determined by dividing by 12 the total wages, including cash bonuses and overtime pay, earned in four successive quarters in the 24 months preceding the injury or disease manifestation that most reasonably represent the worker's wages. If the worker has been employed less than a year at the time of injury or disease manifestation, whether self-employed or in employment intended to be continuous, 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. This "usual wage" formula is also used if the worker is in a job not intended to be continuous or is earning wages 50 percent or less of the wages earned in the previous 12 months.

Time-loss payments may be provisionally based on the worker's wages at injury if sufficient information is not available to calculate the 12-month average wage before the first payment is due.

Calculation of Benefit Amounts

Time-loss and pension benefit calculations are changed for claims with a date of injury or disease manifestation after June 30, 2003, as follows:

- the percentage multiplier is fixed at 65.5 percent (without regard to dependents);
- the minimum benefit is changed from a range of \$185 to \$352 to a fixed amount of \$276; and
- the maximum cap for claims with the date of injury after June 30, 2004, is adjusted for inflation from the July 1, 2003, level using the IPD instead of the SAMW.

Survivor benefit calculations are changed for claims with a date of injury or disease manifestation after June 30, 2003, as follows:

- the maximum payment for burial expenses is adjusted for inflation from the July 1,

- 2002, level using the IPD instead of the SAMW;
- the percentage multiplier is fixed at 65.5 percent;
- the maximum cap for benefits for claims with the date of injury after June 30, 2004, is adjusted for inflation from the July 1, 2003, level using the IPD instead of the SAMW; and
- the minimum benefit is changed from a range of \$185 to \$352 to a fixed amount of \$276.

Vocational Rehabilitation

The \$4,000 limit on the amount of vocational rehabilitation benefits that may be paid in a 52-week period is increased to \$5,000.

Other Benefit Issues

Time-loss benefits continue until the worker is capable of gainful employment on a reasonably continuous basis and has restored earning power. The worker must be employed to receive loss-of-earning power benefits. These benefits are available only until the worker's condition becomes medically fixed and stable.

Beginning July 1, 2003, cost-of-living increases for compensatory benefits are adjusted for inflation from the July 1, 2002, level using the IPD instead of the SAMW. Maximum permanent partial disability awards are adjusted for inflation using the IPD instead of the U.S. Consumer Price Index. For claims with the date of injury after June 30, 2004, the maximum cost for residence or vehicle modification is adjusted for inflation using the IPD instead of the state average annual wage.

For claims filed after June 30, 2003, 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.

Change in Circumstances

The authority to apply for an increase in compensation because of "change of circumstances" is deleted. It is specified that 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 contains an emergency clause and takes effect on July 1, 2003.