

# SENATE BILL REPORT

## SB 5466

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As of February 3, 2005

**Title:** An act relating to the calculation of wages under industrial insurance provisions.

**Brief Description:** Modifying the definition of wages.

**Sponsors:** Senators Parlette, Honeyford, Deccio, Mulliken, Hewitt and Delvin.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 2/3/05.

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Staff:** Jennifer Strus (786-7316)

**Background:** 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* (L&I), 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.

**Summary of Bill:** The number of hours worked per day, week, or month may be averaged to obtain the number of hours the worker "normally worked." In determining the worker's wages, as a general rule, L&I cannot include wages for hours worked in a week in excess of 40. However, if the worker can demonstrate a pattern of working more than 40 hours a week for the same employer during the three months immediately preceding the injury for which the worker is seeking compensation, then those additional hours may be considered in the calculation of the worker's wages.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Washington uses a complex system to determine a worker's wages for purposes of computing the amount of an injured worker's compensation benefit. The system is

confusing to workers and employers alike. It is difficult to determine the wages of a seasonal or intermittent worker. Some workers have received a large weekly worker's compensation benefit because their wage is determined based upon a week during which they may have worked overtime. This is an unfair result. L&I should be given the discretion to determine a wage at the time of injury that reflects reality.

**Testimony Against:** Worker's compensation benefits are based upon the number of hours a worker is exposed to risk. A worker who works overtime has a greater chance to be injured simply because they are working extra hours. This bill would penalize those workers for working overtime should they get injured. Also, many construction workers work for five or six employers in a year and while this is normal this bill would penalize them. This bill will result in the reduction of benefits for a number of workers.

**Who Testified:** PRO: Dan Fazio, Washington State Farm Bureau; Angela Schauer, Continental Floral Greens; Jon Warling, Mar-Jon Orchards.

CON: Dave Johnson, Washington State Building Trades Council; Robby Stern, Washington State Labor Council; Owen Linch, Teamsters.