

# SENATE BILL REPORT

## SB 5124

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As of January 28, 2013

**Title:** An act relating to simplifying and adding certainty to the calculation of workers' compensation benefits.

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

**Sponsors:** Senators Holmquist Newbry, Braun, King, Baumgartner, Rivers, Ericksen, Benton, Becker, Dammeier, Smith, Schoesler, Honeyford, Tom, Parlette and Hewitt.

**Brief History:**

**Committee Activity:** Commerce & Labor: 1/23/13.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Staff:** Mac Nicholson (786-7445)

**Background:** Under the state's industrial insurance laws, workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities.

Time-loss benefits are wage replacement benefits for workers who cannot work because of their injury. The amount of time-loss benefits is a percentage of the worker's pre-injury wages, and adjusts depending on the marital status of the worker and the number of the worker's children. An unmarried worker with no children receives 60 percent of their wages, while a married worker with no children receives 65 percent. The percentage is increased by 2 percent for each child of the injured worker, up to a maximum of 10 percent. The monthly time-loss benefit is capped at 120 percent of the state's average monthly wage, as determined by the Employment Security Department. Time-loss benefits cease as soon as the worker's recovery is complete and their earning power is restored to that existing at the time of the injury.

Workers who suffer certain types of injuries and workers whose injuries preclude any further gainful employment are entitled to permanent total disability pensions. Pension benefits are paid monthly, and are based on the amount of time-loss compensation to which the worker is entitled. Pension benefits are paid for the life of the injured worker. If a worker receiving a

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pension returns to gainful employment for wages, the Department of Labor and Industries (L&I) may suspend or terminate the pension.

When death results from the work-related injury, the surviving spouse receives a pension, calculated in the same manner as time-loss benefits, until the spouse remarries. Dependent children of a worker who dies from a work related injury are also entitled to benefits, as are other dependents.

The monthly wages the worker received from all employment at the time of injury is used to calculate time-loss benefits. The statutory definition of wages includes medical, dental, and vision benefits; the reasonable value of room and board, housing, heating fuel, or similar considerations received from the employer as part of the worker's income; bonuses received in the last 12 months from the employer of injury; and tips reported to the employer for federal income tax purposes. The monthly wage calculation for seasonal and part-time workers is determined using the total wages earned, including overtime, from all employment in a consecutive 12-month period preceding the injury, which fairly represents the employment pattern.

**Summary of Bill:** The current definition of wages is changed to the following: the gross monetary remuneration for services performed with respect to a pay period; the actual value of board, housing, and fuel received from the employer as part of the contract for hire; and tips, to the extent they are reported to the employer for federal income tax purposes. Health and welfare benefits, and other fringe benefits, are not included.

For workers in jobs that both the worker and the employer intend to be permanent and lasting into the foreseeable future, the worker's monthly wage is determined using the total wages earned from all employment, including cash bonuses and overtime, in the 12 months immediately preceding the date of injury. If the worker has worked less than 12 months for the employer of injury, the monthly wage is based on the total wages earned by the worker in that employment divided by the total number of months actually worked in the employment.

For workers in jobs that either the worker or the employer intend to be temporary and not lasting into the foreseeable future, the monthly wage is determined using the total wages earned from all employment, including cash bonuses and overtime, in the 12 months immediately preceding the date of injury.

For injuries occurring on or after July 1, 2013, the calculation used to determine monthly benefit amounts for surviving spouse benefits and pension benefits is changed from a sliding scale to a static 66.67 percent. A minimum monthly benefit of \$276 is established for pensions.

The cap on the maximum monthly benefit for all surviving spouse benefits, dependent child benefits, dependent non-child benefits, pension benefits, and time-loss benefits is changed from 120 percent of the average monthly wage to 100 percent of the average monthly wage.

An injured worker is eligible for loss of earning power payments only until the injured worker's condition is medically fixed and stable.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2013.

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

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2013.

**Staff Summary of Public Testimony:** PRO: This bill would streamline the process and reduce expenses regarding calculation of wages. The bill will also provide ease of benefit explanation to employees. The legislation is a lean process. It takes less time to figure a wage under the legislation than under existing law. It will save employers time and money. This bill is the best approach to calculate wages. The current wage calculation process is cumbersome and must happen on every claim. The bill simplifies the entire process.

CON: This bill is a dramatic benefit cut for families when a worker is injured. When it comes to the inability to work, it is fair for somebody with increased need that cannot take care of their family to get that extra benefit with the higher wage replacement.

OTHER: Trying to simplify the process of determining wages and whether it could save time is intriguing. Further exploration is needed to determine if simplifying the process would actually save time. The bill moves to a yearly average, which still involves gathering information and can be complicated, particularly for an employee who had a number of employers over the year. The bill changes benefit levels by removing health care benefits from the wage calculation. It would be more convenient administratively to have one rate for everybody, but the flip side is that it creates winners and losers under the bill. The bill also lowers the maximum benefit, which could have an impact for new workers. It might be worth considering whether to split the wage definition piece in the bill from the benefit piece.

**Persons Testifying:** PRO: Glenn Hansen, Multicare Health Systems; Linda Maw, True Blue, Inc.; Tammy Hetrick, WA Retail Assn.; Patrick Connor, National Federation of Independent Business; Darlene Johnson, Woodland Truck Line; Jeff Richter, Chilton Logging; Jerry Murphy, Greenshields Industrial Supply; Andrew Barkis, Hometown Property Management; Dean Hartman, Capitol Business Machines; Merrill Berger, C&C Logging; Trent House, Aerospace Futures Alliance; Brad Boswell, Seattle Chamber of Commerce; Scott Dilley, WA Farm Bureau; Kris Tefft, Assn. of WA Business.

CON: Rebecca Johnson, WA State Labor Council; Dave Meyers, WA State Building Trades; Kathy Comfort, WA Assn. for Justice; Geoff Simpson, WA Council of Firefighters; Sharon Ness, UFCW; Nicole Grant, Certified Electrical Workers of WA; Bob Guenther, IBEW; Shawn O'Sullivan, AWPPW; Cody Arledge, Sheet Metal Workers, UFCW; Katherine Mason, WA Assn. for Justice

OTHER: Joel Sacks, Vickie Kennedy, L&I.