

SENATE BILL REPORT

SB 5510

As of February 11, 2015

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 Braun, Baumgartner, Rivers and Angel.

Brief History:

Committee Activity: Commerce & Labor: 2/04/15.

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 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 are 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, 2015, the calculation used to determine monthly benefit amounts for surviving spouse benefits, time loss 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.

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: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015.

Staff Summary of Public Testimony: PRO: Needless time is spent on calculating wages for compensation. Some people earn more on time loss than they earned when working. The current time-loss calculation is very complex, and can be calculated differently by different claims managers. This will bring simplicity and transparency to the calculation. This bill will bring consistency and fairness to the claims system. This bill is important to employer and business groups.

CON: This bill would simplify wage calculation, but it would trade away accuracy and fairness. It removes consideration of the value of health care benefits, and could leave families without health care. The value of health care benefits is a major piece of overall compensation and should be included in wage calculation. This bill is particularly problematic for the construction industry, where workers work an erratic schedule due to construction activity and will hurt the calculation because of the 12-month averaging. There is unclear and ambiguous language in the legislation. This bill will reduce benefits for widows and children.

OTHER: The wage calculation does drive benefit levels. There will be different impacts to different industries under the proposal, including retail temporary help and the construction industry. There are no provisions in the legislation to address unusual work patterns.

Persons Testifying: PRO: Carolyn Logue, WA Food Industry Assn.; Bob Battles, Assn of WA Business; Kris Tefft, WA Self-Insurers Assn.; Paul Chasco, Educational Service District 113; Tammie Hetrick, WA Retail Assn.; Lauren Gubbe, Associated General Contractors.

CON: Elizabeth LePley, WA State Assn. for Justice; Joe Mizrahi, United Food and Commercial Workers Local 21; Neil Hartman, WA Building and Construction Trades Council; Renee Maher, Council of Metropolitan Police and Sheriffs.

OTHER: Vickie Kennedy, Labor and Industries.