

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1166

Short Title: Workers' Comp./Average Weekly Wages.

(Public)

Sponsors: Senator Odom.

Referred to: Commerce.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF AVERAGE WEEKLY WAGES UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2(5) reads as rewritten:

"(5) Average Weekly Wages. - 'Average weekly wages' ~~shall mean~~ means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States government, provided the amount of ~~said the~~ allowance ~~shall be~~ is reported monthly by ~~said the~~ trainee to ~~his the~~ employer, and including wages earned in employment other than that in which the employee was injured, provided that other employment was not sporadic, seasonal employment, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52

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1 weeks, the method of dividing the earnings during that period by the
2 number of weeks and parts thereof during which the employee earned
3 wages shall be followed; provided, results fair and just to both parties
4 will be thereby obtained. Where, by reason of a shortness of time during
5 which the employee has been in the employment of his employer or the
6 casual nature or terms of his employment, it is impractical to compute
7 the average weekly wages as above defined, regard shall be had to the
8 average weekly amount which during the 52 weeks previous to the
9 injury was being earned by a person of the same grade and character
10 employed in the same class of employment in the same locality or
11 community.

12 But where for exceptional reasons the foregoing would be unfair,
13 either to the employer or employee, such other method of computing
14 average weekly wages may be resorted to as will most nearly
15 approximate the amount which the injured employee would be earning
16 were it not for the injury.

17 Wherever allowances of any character made to an employee in lieu
18 of wages are specified part of the wage contract they shall be deemed a
19 part of his earnings.

20 Where a minor employee, under the age of 18 years, sustains a
21 permanent disability or dies leaving dependents surviving, the
22 compensation payable for permanent disability or death shall be
23 calculated, first, upon the average weekly wage paid to adult employees
24 employed by the same employer at the time of the accident in a similar
25 or like class of work which the injured minor employee would probably
26 have been promoted to if not injured, or, second, upon a wage sufficient
27 to yield the maximum weekly compensation benefit. Compensation for
28 temporary total disability or for the death of a minor without dependents
29 shall be computed upon the average weekly wage at the time of the
30 accident, unless the total disability extends more than 52 weeks and then
31 the compensation may be increased in proportion to his expected
32 earnings.

33 In case of disabling injury or death to a volunteer fireman or member
34 of an organized rescue squad or duly appointed and sworn member of
35 an auxiliary police department organized pursuant to G.S. 160A-282 or
36 senior members of the State Civil Air Patrol functioning under Article
37 11, Chapter 143B, under compensable circumstances, compensation
38 payable shall be calculated upon the average weekly wage the volunteer
39 fireman or member of an organized rescue squad or member of an
40 auxiliary police department or senior member of the State Civil Air
41 Patrol was earning in the employment wherein he principally earned his
42 livelihood as of the date of injury. Provided, however, that the minimum
43 compensation payable to a volunteer fireman, member of an organized

1 rescue squad or sworn member of an auxiliary police department
2 organized pursuant to G.S. 160A-282, or senior members of the State
3 Civil Air Patrol shall be sixty-six and two thirds percent (66 2/3%) of
4 the maximum weekly benefit established in G.S. 97-29."

5 Section 2. This act becomes effective October 1, 1999, and applies to awards
6 for compensation entered on or after that date.