

2024 Regular Session

HOUSE BILL NO. 529

BY REPRESENTATIVES CREWS, MCFARLAND, AND MIKE JOHNSON

WORKERS COMPENSATION: Provides relative to the determination of the average weekly wage

1 AN ACT

2 To amend and reenact R.S. 23:1021(13) and to repeal R.S. 23:1021(11), relative to workers'
3 compensation; to define the term "wages"; to provide for the determination of the
4 average weekly wage; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 23:1021(13) is hereby amended and reenacted to read as follows:

7 §1021. Terms defined

8 As used in this Chapter, unless the context clearly indicates otherwise, the
9 following terms shall be given the meaning ascribed to them in this Section:

10 * * *

11 (13) "Wages" means average weekly wage at the time of the accident, which
12 shall be determined as follows: ~~The average weekly wage shall be determined as~~
13 ~~follows:~~

14 (a) ~~Hourly wages:~~ The employee's total earnings divided by the total number
15 of weeks which the employee was employed by the employer prior to the work
16 accident, excluding the week of the accident and subject to a maximum period of the
17 fifty-two calendar weeks immediately preceding the work accident.

18 (b) Except as provided in Item (vi), total earnings are limited to
19 compensation paid by the employer and shall be limited to the following:

20 (i) Full-time, part-time, hourly, monthly, annual, or seasonal employment.

1 (ii) Paid sick leave, paid vacation, or paid holidays. Sick leave, vacation, or
2 holidays that are earned but not paid shall not be included in total earnings.

3 (iii) Unit, odd-lot, or piecework employment.

4 (iv) Tips reported to the employer.

5 (v) Incentive pay, commissions, or bonuses.

6 (vi) Earnings received from any concurrent employment if the employee
7 works less than forty hours per week in the employment from which the work
8 accident arises.

9 (aa) Notwithstanding the provisions of this Paragraph, in no event shall the
10 total earnings exceed the higher of total earnings actually paid to the employee for
11 the employment giving rise to the work accident, or total earnings that would have
12 been paid for such employment had he worked forty hours per week.

13 (bb) The employee shall bear the burden of proving concurrent employment
14 and earnings from concurrent employment and shall provide documentation of such
15 to the employer.

16 (c) If the employee has not worked at least one full week preceding the week
17 of the work accident, the average weekly wage shall be the average weekly wage
18 agreed upon by the employer and employee at the time of employment.

19 ~~(i) If the employee is paid on an hourly basis and the employee is employed~~
20 ~~for forty hours or more, his hourly wage rate multiplied by the average actual hours~~
21 ~~worked in the four full weeks preceding the date of the accident or forty hours,~~
22 ~~whichever is greater; or~~

23 ~~(ii) If the employee is paid on an hourly basis and the employee was offered~~
24 ~~employment for forty hours or more but regularly, and at his own discretion, works~~
25 ~~less than forty hours per week for whatever reason, then, the average of his total~~
26 ~~earnings per week for the four full weeks preceding the date of the accident; or~~

27 ~~(iii) If the employee is paid on an hourly basis and the employee is a part-~~
28 ~~time employee, his hourly wage rate multiplied by the average actual hours worked~~
29 ~~in the four full weeks preceding the date of the injury.~~

1 ~~(iv) A part-time employee, as defined in R.S. 23:1021(9) and who is~~
2 ~~employed by two or more different employers in two or more successive~~
3 ~~employments, shall be entitled to receive benefits as follows:~~

4 ~~(aa) If an employee is employed by two or more different employers in two~~
5 ~~or more successive employments and the employee incurs a compensable injury~~
6 ~~under the provisions of this Chapter in one of the employments, the employer in~~
7 ~~whose service the employee was injured shall pay the benefits due the employee as~~
8 ~~provided in this Chapter.~~

9 ~~(bb) If the employee is a part-time employee in one of the successive~~
10 ~~employments, is injured in that employment, but as a result of the injury also incurs~~
11 ~~loss of income from other successive employments, that employee shall be entitled~~
12 ~~to benefits computed by determining wages under the provisions of this Subsection~~
13 ~~using his hourly rate in employment at the time of injury and using the total hours~~
14 ~~worked for all employers of the part-time employee, but not to exceed his average,~~
15 ~~actual weekly hours worked or forty hours weekly, whichever is less.~~

16 ~~(v) For an employee in seasonal employment, his annual income divided by~~
17 ~~fifty-two:~~

18 ~~(aa) For purposes of this Subparagraph, seasonal employment shall be any~~
19 ~~employment customarily operating only during regularly recurring periods of less~~
20 ~~than forty-four weeks annually.~~

21 ~~(bb) If the employee was not engaged in the seasonal employment more than~~
22 ~~one year prior to the accident, his annual income shall be the average annual income~~
23 ~~of other employees of the same or most similar class working in the same or most~~
24 ~~similar employment for the same employer or, in the event that the employee was the~~
25 ~~only individual engaged in that specific employment, then his annual income shall~~
26 ~~be the average annual income of other employees of the same or most similar class~~
27 ~~working for a neighboring employer engaged in the same or similar employment.~~

28 ~~(b) Monthly wages. If the employee is paid on a monthly basis, his monthly~~
29 ~~salary multiplied by twelve then divided by fifty-two.~~

1 ~~(c) Annual wages. If the employee is employed at an annual salary, his~~
2 ~~annual salary divided by fifty-two.~~

3 ~~(d) Other wages. If the employee is employed on a unit, piecework,~~
4 ~~commission, or other basis, his gross earnings from the employer for the twenty-six~~
5 ~~week period immediately preceding the accident divided by the number of days the~~
6 ~~employee actually worked for the employer during said twenty-six week period and~~
7 ~~multiplied by the average number of days worked per week; however, if such an~~
8 ~~employee has worked for the employer for less than a twenty-six week period~~
9 ~~immediately preceding the accident, his gross earnings from the employer for the~~
10 ~~period immediately preceding the accident divided by the number of days the~~
11 ~~employee actually worked for the employer during said period and multiplied by the~~
12 ~~average number of days worked per week.~~

13 ~~(e)~~(d) Exceptions. For municipal police officers, additional compensation
14 paid by the state pursuant to R.S. 40:1667.3 shall not be included in the calculation
15 and computation of total salary or average weekly wage to the extent such officer
16 continues to receive such additional compensation during the period of his disability.

17 ~~(f)~~(e) Income tax. In the determination of "wages" and the average weekly
18 wage at the time of the accident, no amount shall be included for any benefit or form
19 of compensation which is not taxable to an employee for federal income tax
20 purposes; however, any amount withheld by the employer to fund any nontaxable or
21 tax-deferred benefit provided by the employer and which was elected by the
22 employee in lieu of taxable earnings shall be included in the calculation of the
23 employee's wage and average weekly wage including but not limited to any amount
24 withheld by the employer to fund any health insurance benefit provided by the
25 employer and which was elected by the employee in lieu of taxable earnings shall be
26 included in the calculation of the employee's wage and average weekly wage.

27 ~~(g)~~(f) Date of accident. In occupational disease claims the date of the
28 accident for purposes of determining the employee's average weekly wage shall be
29 the date of the employee's last employment with the employer from whom benefits

1 are claimed or the date of his last injurious exposure to conditions in his
2 employment, whichever date occurs later. Section 2. R.S. 23:1021(11) is hereby
3 repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 529 Engrossed

2024 Regular Session

Crews

Abstract: Redefines the term "wages" and provides relative to the determination of the average weekly wage amount earned by a workers' compensation claimant.

Present law defines certain terms, including the term "wages".

Present law provides that the term "wages" means the average weekly wage at the time of the accident. The average weekly wage shall be determined based on the type of wages, which includes hourly wages, monthly wages, annual wages, and other wages.

Proposed law repeals the provisions of present law as they relate to hourly wages, monthly wages, annual wages, and other wages and instead redefines wages to be determined as follows:

- (1) The employee's total earnings divided by the total number of weeks which the employee was employed by the employer prior to the work accident, excluding the week of the accident and subject to a maximum period of the 52 calendar weeks immediately preceding the work accident.
- (2) Except as provided in proposed law, total earnings are limited to compensation paid by the employer and shall be limited to the following:
 - (a) Full-time, part-time, hourly, monthly, annual, or seasonal employment.
 - (b) Paid sick leave, paid vacation, or paid holidays. Sick leave, vacation, or holidays that are earned but not paid shall not be included in total earnings.
 - (c) Unit, odd-lot, or piecework employment.
 - (d) Tips reported to the employer.
 - (e) Incentive pay, commissions, bonuses.
 - (f) Earnings received from any concurrent employment if the employee works less than 40 hours per week in the employment from which the work accident arises.

Proposed law provides that in no event shall the total earnings exceed the higher of total earnings actually paid to the employee for the employment giving rise to the work accident, or total earnings that would have been paid had he worked 40 hours per week.

Proposed law provides that the employee shall bear the burden of proving concurrent employment and earnings from concurrent employment and shall provide documentation of the employment to the employer.

Proposed law provides that if an employee has not worked at least one full week preceding the week of the work accident, the average weekly wage shall be the average weekly wage agreed upon by the employer and employee at the time of employment.

Present law defines "part-time employee".

Proposed law repeals the definition of "part-time employee".

(Amends R.S. 23:1021(13); Repeals R.S. 23:1021(11))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Labor and Industrial Relations to the original bill:

1. Replace provisions of proposed law that define wages with a new definition.
2. Make technical and title changes.