

Regular Session, 2014

HOUSE BILL NO. 1069

BY REPRESENTATIVES BROADWATER AND HENRY

WORKERS COMPENSATION: Provides with respect to variable wage employment contracts

1 AN ACT

2 To amend and reenact R.S. 23:1021(13)(e) through (g) and to enact R.S. 23:1021(13)(h),  
3 relative to workers' compensation; to provide with respect to average weekly wage;  
4 to provide for the calculation of average weekly wage for employees with variable  
5 wage employment contracts; to provide for definitions; and to provide for related  
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:1021(13)(e) through (g) are hereby amended and reenacted and  
9 R.S. 23:1021(13)(h) is hereby enacted to read as follows:

10 §1021. Terms defined

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

13 \* \* \*

14 (13) "Wages" means average weekly wage at the time of the accident. The  
15 average weekly wage shall be determined as follows:

16 \* \* \*

17 (e) Variable wage employment contract. If an employee has a written  
18 contract for hire, and that written contract for hire provides for variable wages  
19 dependent on the employee's activity, job description, job status, a temporal  
20 consideration, or any other condition based on a variable wage rate, the employee's

1        average weekly wage shall be calculated as the employee's actual earnings at the  
2        time of his injury. Any written employment contract that does not provide for the  
3        same wage rate for each pay period during the entire term of the contract shall be  
4        deemed to be a variable wage employment contract. The average weekly wage for  
5        a variable wage employment contract is calculated as follows:

6                (i) If the employee's actual contractual wage rate is based on a day rate, then  
7        the employee's average weekly wage shall be calculated by multiplying the  
8        employee's actual contractual daily wage rate on the date of injury by seven days.

9                (ii) If the employee's actual contractual wage rate at the time of injury is  
10       based on a weekly wage rate, then the employee's actual contractual weekly wage  
11       rate at the time of injury shall be the calculated average weekly wage.

12               (iii) If the employee's actual contractual wage rate at the time of injury is  
13       based on a monthly wage rate, then the employee's average weekly wage shall be  
14       calculated by dividing the employee's actual monthly wage rate at the time of injury  
15       by four and three-tenths weeks.

16               ~~(e)~~(f) Exceptions. For municipal police officers, additional compensation  
17       paid by the state pursuant to R.S. 33:2218.4 shall not be included in the calculation  
18       and computation of total salary or average weekly wage to the extent such officer  
19       continues to receive such additional compensation during the period of his disability.

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

1            ~~(g)~~ (h) Date of accident. In occupational disease claims the date of the  
 2            accident for purposes of determining the employee's average weekly wage shall be  
 3            the date of the employee's last employment with the employer from whom benefits  
 4            are claimed or the date of his last injurious exposure to conditions in his  
 5            employment, whichever date occurs later.

### 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)]

Broadwater

HB No. 1069

**Abstract:** Provides for the calculation of average weekly wage for variable wage employment contracts.

Present law provides for the determination of the average weekly wage of an injured worker.

Present law provides the method of calculating average weekly wage depending on how an employee was being compensated at the time of injury.

Present law provides definitions.

Proposed law defines variable wage employment contract to include any contract that provides for variable wages dependent on an employee's activity, job description, job status, a temporal consideration, or any other condition based on a variable wage rate.

Proposed law provides how an employee's average weekly wage is calculated when he is employed under a variable wage employment contract.

Proposed law provides that if an employee's actual contractual wage at the time of injury is based on a daily rate, then his average weekly wage shall be calculated by multiplying the employee's actual contractual daily wage rate on the date of injury by seven days.

Proposed law provides that if an employee's actual contractual wage rate at the time of injury is based on a weekly wage rate, then his actual contractual weekly wage rate at the time of injury shall be the calculated average weekly wage rate.

Proposed law provides that if the employee's actual contractual wage rate at the time of injury is based on a monthly wage rate, then his average weekly wage shall be calculated by dividing his actual monthly wage rate at the time of injury by four and three-tenths weeks.

Proposed law provides that any written employment contract that does not provide for the same wage rate for each pay period during the entire term of the contract shall be deemed to be a variable wage employment contract.

(Amends R.S. 23:1021(13)(e)-(g); Adds R.S. 23:1021(13)(h))