

Regular Session, 2011

SENATE BILL NO. 143

BY SENATOR QUINN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WORKERS' COMPENSATION. Excludes certain unanticipated bonus payments from the determination of payroll, wages, and average weekly wage at the time of the accident. (8/15/11)

1 AN ACT

2 To amend and reenact the introductory paragraph of R.S. 23:1021 and to enact R.S.
3 22:1452(C)(15.1) and R.S. 23:1021(11.1) and (12)(h), relative to workers'
4 compensation; to exclude certain unanticipated bonuses that are paid by an employer
5 from the determination of wage and average weekly wage and payroll when the
6 bonuses are beyond the contract of employment; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:1452(C)(15.1) is hereby enacted to read as follows:

9 §1452. Purpose of rate regulation; construction; definitions

10 * * *

11 C. As used in this Subpart, the following definitions shall be applicable:

12 * * *

13 **(15.1) (a) "Payroll", for purposes of determining the premium rate to be**
14 **paid for workers' compensation coverage, shall not include an unanticipated**
15 **bonus paid to an employee by an employer.**

16 **(b) A bonus payment is unanticipated if all of the following conditions**
17 **are met:**

1 (i) The payment is not part of an oral or written employment agreement.

2 (ii) The payment is paid as an arbitrary and gratuitous disbursement.

3 (iii) The payment is paid at the sole discretion of the employer.

4 (iv) The payment is paid only once a year, in the month immediately
5 before or the month immediately after the employer's fiscal year end.

6 (v) The employee has previously been paid wages by the employer
7 during the twelve-month period prior to receipt of the bonus.

8 (vi) The payment does not exceed ten percent of the wages previously
9 paid to the employee for the year.

10 (c) A bonus payment that does not meet all the requirements contained
11 in this Paragraph is to be included in the premium rate to be paid for workers'
12 compensation coverage.

13 * * *

14 Section 2. The introductory paragraph of R.S. 23:1021 is hereby amended and
15 reenacted and R.S. 23:1021(11.1) and (12)(h) are hereby enacted to read as follows:

16 §1021. Terms defined

17 As used in this Chapter, unless the context clearly indicates otherwise, the
18 following terms shall be given the ~~meaning~~ meanings ascribed to them in this
19 Section:

20 * * *

21 (11.1) (a) "Payroll", for purposes of determining the premium rate to be
22 paid for workers' compensation coverage, shall not include an unanticipated
23 bonus paid to an employee by an employer.

24 (b) A bonus payment is unanticipated if all of the following conditions
25 are met:

26 (i) The payment is not part of an oral or written employment agreement.

27 (ii) The payment is paid as an arbitrary and gratuitous disbursement.

28 (iii) The payment is paid at the sole discretion of the employer.

29 (iv) The payment is paid only once a year in the month immediately

1 before or the month immediately after the employer's fiscal year end.

2 (v) The employee has previously been paid wages by the employer
3 during the twelve-month period prior to receipt of the bonus.

4 (vi) The payment does not exceed ten percent of the wages previously
5 paid to the employee for the year.

6 (c) A bonus payment that does not meet all the requirements contained
7 in this Paragraph is to be included in the premium rate to be paid for workers'
8 compensation coverage.

9 * * *

10 (12) "Wages" means average weekly wage at the time of the accident. The
11 average weekly wage shall be determined as follows:

12 * * *

13 (h)(i) In the determination of "wages" and the average weekly wage at
14 the time of the accident, no amount shall be included for an unanticipated bonus
15 paid to an employee by an employer.

16 (ii) A bonus payment is unanticipated if all of the following conditions
17 are met:

18 (aa) The payment is not part of an oral or written employment
19 agreement.

20 (bb) The payment is paid as an arbitrary and gratuitous disbursement.

21 (cc) The payment is paid at the sole discretion of the employer.

22 (dd) The payment is paid only once a year in the month immediately
23 before or the month immediately after the employer's fiscal year end.

24 (ee) The employee has previously been paid wages by the employer
25 during the twelve-month period prior to receipt of the bonus.

26 (ff) The payment does not exceed ten percent of the wages previously
27 paid to the employee for the year.

28 (iii) A bonus payment that does not meet all the requirements contained
29 in this Subparagraph is to be included in the determination of "wages" and the

1 **average weekly wage at the time of the accident.**

The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Mary Dozier O'Brien.

DIGEST

Quinn (SB 143)

Proposed law provides that the term "payroll" for purposes of determining the premium rate to be paid for workers' compensation coverage shall not include any bonus paid by an employer that meets all of the following criteria:

- (1) Payment is not part of an oral or written employment agreement.
- (2) Payment is paid as an arbitrary and gratuitous disbursement.
- (3) Payment is paid at the sole discretion of the employer.
- (4) Payment is paid only once a year, in the month immediately before or after the employer's fiscal year end close.
- (5) The employee has previously been paid wages by the employer in the twelve- month period prior to the receipt of the bonus.
- (6) Payment does not exceed ten percent of the wages previously paid to the employee for the year.

Proposed law, relative to workers' compensation, provides that "wages" and the determination of average weekly wage at the time of the accident shall not include any bonus paid by an employer which meets all of the following criteria:

- (1) Payment is not part of an oral or written employment agreement.
- (2) Payment is paid as an arbitrary and gratuitous disbursement.
- (3) Payment is paid at the sole discretion of the employer.
- (4) Payment is paid only once a year, in the month immediately before or after the employer's fiscal year end close.
- (5) The employee has previously been paid wages by the employer in the twelve- month period prior to the receipt of the bonus.
- (6) Payment does not exceed ten percent of the wages previously paid to the employee for the year.

Effective August 15, 2011.

(Amends R.S. 23:1021(intro para); adds R.S. 22:1452(C)(15.1) and R.S. 23:1021(11.1) and (12)(h))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill.

1. Amendments provide a detailed definition of an unanticipated bonus, including six criteria that shall all be met to avoid including the bonus amount for purposes of determining a premium rate for workers' compensation coverage.
2. Amendments provide a detailed definition of an unanticipated bonus, including six criteria that shall all be met to avoid including the bonus amount in the calculation of "wage" and the average weekly wage at the time of a workers' compensation covered accident.