

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH30200-LR-13 (12/18)

Short Title: Workers' Comp./Calculation of Income.

(Public)

Sponsors: Representative Glazier.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT AN EMPLOYER'S CONTRIBUTIONS TO AN
3 EMPLOYEE'S RETIREMENT ACCOUNTS ARE INCLUDED IN THE CALCULATION
4 OF "AVERAGE WEEKLY WAGE" UNDER THE WORKERS' COMPENSATION ACT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 97-2(5) reads as rewritten:

7 "(5) Average Weekly Wages. – "Average weekly wages" shall mean the earnings
8 of the injured employee in the employment in which he was working at the
9 time of the injury during the period of 52 weeks immediately preceding the
10 date of the injury, including the subsistence allowance paid to veteran
11 trainees by the United States government, provided the amount of said
12 allowance shall be reported monthly by said trainee to his employer, divided
13 by 52; but if the injured employee lost more than seven consecutive calendar
14 days at one or more times during such period, although not in the same
15 week, then the earnings for the remainder of such 52 weeks shall be divided
16 by the number of weeks remaining after the time so lost has been deducted.
17 For the purposes of this subdivision, the term 'earnings' includes an
18 employer's contributions to an employee's retirement accounts if the
19 contributions are vested, quantifiable, and available to the employee.

20 Where the employment prior to the injury extended over a period of
21 fewer than 52 weeks, the method of dividing the earnings during that period
22 by the number of weeks and parts thereof during which the employee earned
23 wages shall be followed; provided, results fair and just to both parties will be
24 thereby obtained. Where, by reason of a shortness of time during which the
25 employee has been in the employment of his employer or the casual nature
26 or terms of his employment, it is impractical to compute the average weekly
27 wages as above defined, regard shall be had to the average weekly amount
28 which during the 52 weeks previous to the injury was being earned by a
29 person of the same grade and character employed in the same class of
30 employment in the same locality or community.

31 But where for exceptional reasons the foregoing would be unfair, either
32 to the employer or employee, such other method of computing average
33 weekly wages may be resorted to as will most nearly approximate the



1 amount which the injured employee would be earning were it not for the
2 injury.

3 Wherever allowances of any character made to an employee in lieu of
4 wages are specified part of the wage contract, they shall be deemed a part of
5 his earnings.

6 Where a minor employee, under the age of 18 years, sustains a
7 permanent disability or dies leaving dependents surviving, the compensation
8 payable for permanent disability or death shall be calculated, first, upon the
9 average weekly wage paid to adult employees employed by the same
10 employer at the time of the accident in a similar or like class of work which
11 the injured minor employee would probably have been promoted to if not
12 injured, or, second, upon a wage sufficient to yield the maximum weekly
13 compensation benefit. Compensation for temporary total disability or for the
14 death of a minor without dependents shall be computed upon the average
15 weekly wage at the time of the accident, unless the total disability extends
16 more than 52 weeks, and then the compensation may be increased in
17 proportion to his expected earnings.

18 In case of disabling injury or death to a volunteer fireman; member of an
19 organized rescue squad; an authorized pickup firefighter, as defined in
20 subdivision (2) of this section, when that individual is engaged in emergency
21 fire suppression activities for the Division of Forest Resources; a duly
22 appointed and sworn member of an auxiliary police department organized
23 pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol
24 functioning under Article 11 of Chapter 143B of the General Statutes, under
25 compensable circumstances, compensation payable shall be calculated upon
26 the average weekly wage the volunteer fireman, member of an organized
27 rescue squad, authorized pickup firefighter of the Division of Forest
28 Resources, when that individual is engaged in emergency fire suppression
29 activities for the Division of Forest Resources, member of an auxiliary
30 police department, or senior member of the State Civil Air Patrol was
31 earning in the employment wherein he principally earned his livelihood as of
32 the date of injury. Provided, however, that the minimum compensation
33 payable to a volunteer fireman, member of an organized rescue squad, an
34 authorized pickup firefighter of the Division of Forest Resources of the
35 Department of Environment and Natural Resources, when that individual is
36 engaged in emergency fire suppression activities for the Division of Forest
37 Resources, a sworn member of an auxiliary police department organized
38 pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol
39 shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly
40 benefit established in G.S. 97-29."

41 **SECTION 2.** This act is effective when it becomes law.