

2024 Regular Session

SENATE BILL NO. 366

BY SENATOR STINE

WORKERS' COMPENSATION. Provides relative to the workers' compensation weekly wage. (8/1/24)

1 AN ACT

2 To amend and reenact R.S. 23:1021(11) and (12) and to repeal R.S. 23:1021(13), relative
3 to workers' compensation; to provide for the computation of wages; to provide
4 definitions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 23:1021(11) and (12) are hereby amended and reenacted to read as
7 follows:

8 §1021. Terms defined

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

11 * * *

12 ~~(11) "Part-time employee" means an employee who as a condition of his~~
13 ~~hiring knowingly accepts employment that (a) customarily provides for less than~~
14 ~~forty hours per work week, and (b) that is classified by the employer as a part-time~~
15 ~~position.~~

16 ~~(12)~~**(11)** "Payor" means the entity responsible, whether by law or contract, for
17 the payment of benefits incurred by a claimant as a result of a work related injury.

1 ~~(13)(12)~~ **"Wages"** means: ~~average weekly wage at the time of the accident.~~

2 ~~The average weekly wage shall be determined as follows:~~

3 ~~(a) Hourly wages:~~

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

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

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

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

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

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

1 ~~(v) For an employee in seasonal employment, his annual income divided by~~
2 ~~fifty-two.~~

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

6 ~~(bb) If the employee was not engaged in the seasonal employment more than~~
7 ~~one year prior to the accident, his annual income shall be the average annual income~~
8 ~~of other employees of the same or most similar class working in the same or most~~
9 ~~similar employment for the same employer or, in the event that the employee was the~~
10 ~~only individual engaged in that specific employment, then his annual income shall~~
11 ~~be the average annual income of other employees of the same or most similar class~~
12 ~~working for a neighboring employer engaged in the same or similar employment.~~

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

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

17 ~~(d) Other wages. If the employee is employed on a unit, piecework,~~
18 ~~commission, or other basis, his gross earnings from the employer for the twenty-six~~
19 ~~week period immediately preceding the accident divided by the number of days the~~
20 ~~employee actually worked for the employer during said twenty-six week period and~~
21 ~~multiplied by the average number of days worked per week; however, if such an~~
22 ~~employee has worked for the employer for less than a twenty-six week period~~
23 ~~immediately preceding the accident, his gross earnings from the employer for the~~
24 ~~period immediately preceding the accident divided by the number of days the~~
25 ~~employee actually worked for the employer during said period and multiplied by the~~
26 ~~average number of days worked per week.~~

27 **(a) The employee's total earnings paid by the employer of injury during**
28 **the fifty-two weeks preceding the date of the work accident and excluding the**
29 **week of the injury, divided by fifty-two. Such earnings shall include but are not**

1 limited to earnings from any of the following:

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

4 (ii) Paid sick leave; paid vacation; paid holidays.

5 (iii) Unit, odd-lot, or piecework.

6 (iv) Tips reported to the employer.

7 (v) Commissions or bonuses.

8 (vi) Earnings received by the employee from any other basis of earnings
9 for the employment of injury.

10 (b) Where the employee has worked less than fifty-two weeks in the
11 employment of injury preceding the date of the work accident as set forth in
12 Subparagraph (a) of this Paragraph, but more than four weeks, average weekly
13 wage shall be determined by dividing the employee's total earnings as set forth
14 in Subparagraph (a) of this Paragraph by the total number of weeks worked in
15 the employment of injury, excluding the week of the injury.

16 (c) Where the employee has worked less than four weeks in the
17 employment of injury, average weekly wage shall be determined based on the
18 average weekly amount earned by a person in the same grade and employed at
19 the same or similar work in the community.

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

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

1 employee's wage and average weekly wage including but not limited to any amount
 2 withheld by the employer to fund any health insurance benefit provided by the
 3 employer and which was elected by the employee in lieu of taxable earnings shall be
 4 included in the calculation of the employee's wage and average weekly wage.

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

10 Section 2. R.S. 23:1021(13) is hereby repealed.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Yoursheka D. Butler.

DIGEST

SB 366 Original

2024 Regular Session

Stine

Present law defines certain terms for purposes of the La. Workers' Compensation Law.

Proposed law deletes the present law definition of "part-time employee" and provides a procedure for computing the average weekly wage for employees who have worked less than 52 weeks, but more than four weeks in the employment of injury. Proposed law further provides the procedure for computing the average weekly wage for employees who have worked less than four weeks in the employment of injury.

Proposed law otherwise retains present law.

Effective August 1, 2024.

(Amends R.S. 23:1021(11) and (12); repeals R.S. 23:1021(13))