

CHAPTER 225

LABOR AND INDUSTRY

SENATE BILL 94-190

BY SENATORS Ament and Tebedo;
also REPRESENTATIVES Owen, Clarke, Rupert, and Schauer.

AN ACT

CONCERNING THE CALCULATION OF WAGES UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-40-201 (19), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-40-201. Definitions. As used in articles 40 to 47 of this title, unless the context otherwise requires:

(19) (a) "Wages" shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the injury, either express or implied.

(b) The term "wages" shall include the amount of the employee's cost of continuing the employer's group health insurance plan and, upon termination of the continuation, the employee's cost of conversion to a similar or lesser insurance plan, and gratuities reported to the federal internal revenue service by or for the worker for purposes of filing federal income tax returns and the reasonable value of board, rent, housing, and lodging received from the employer, the reasonable value of which shall be fixed and determined from the facts by the division in each particular case, but shall not include any similar advantage or fringe benefit not specifically enumerated in this subsection (19). If, after the injury, the employer continues to pay any advantage or fringe benefit specifically enumerated in this subsection (19), including the cost of health insurance coverage or the cost of the conversion of such health insurance coverage, such advantage or benefit shall not be included in the determination of the employee's wages so long as the employer continues to make such payment.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) NO PER DIEM PAYMENT SHALL BE CONSIDERED WAGES UNDER THIS SUBSECTION (19) UNLESS IT IS ALSO CONSIDERED WAGES FOR FEDERAL INCOME TAX PURPOSES.

SECTION 2. The introductory portion to 8-42-102 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-42-102 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

8-42-102. Basis of compensation - "wages" defined - average weekly wage.

(2) Average weekly wages for the purpose of computing benefits provided in articles 40 to 47 of this title, except as provided in this section, shall be calculated upon the monthly, weekly, daily, hourly, or other remuneration which the injured or deceased employee was receiving at the time of the injury, and in the following manner; EXCEPT THAT ANY PORTION OF SUCH REMUNERATION REPRESENTING A PER DIEM PAYMENT SHALL BE EXCLUDED FROM THE CALCULATION UNLESS SUCH PAYMENT IS CONSIDERED WAGES FOR FEDERAL INCOME TAX PURPOSES:

(f) WHERE THE EMPLOYEE IS BEING PAID BY THE MILE, THE WEEKLY WAGE SHALL BE DETERMINED BY MULTIPLYING THE RATE PER MILE BY THE AVERAGE NUMBER OF MILES PER DAY THE EMPLOYEE DROVE IN THE SERVICE OF THE EMPLOYER IN THE SIXTY WORKING DAYS IMMEDIATELY PRECEDING THE DATE OF THE INJURY, TO ARRIVE AT A DAILY WAGE; THEN THE WEEKLY WAGE SHALL BE DETERMINED FROM THE SAID DAILY WAGE IN THE MANNER SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (2). IF, ON THE DATE OF THE INJURY, THE EMPLOYEE HAS WORKED FOR THE EMPLOYER LESS THAN SIXTY DAYS, THE AVERAGE DAILY WAGE SHALL BE BASED ON THE AVERAGE MILES DRIVEN PER WORKING DAY DURING SUCH PERIOD.

SECTION 3. 8-45-115 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-45-115. Determination of premium - payment in advance - deductibles.

(1) Each employer insured in the Colorado compensation insurance authority fund shall pay into the Colorado compensation insurance authority fund in advance the amount of premium determined and assessed against such employer for the ensuing period. The amount of the premium to be paid by such employer shall be ~~on the basis of the annual expenditure of money by said employer for the services of persons engaged in such employer's employment. The amount of premium to be so paid by each such employer shall be determined by the manager in accordance with the rules and rates made and published by the board~~ SECTION 8-44-114. Payment shall be made within the time fixed by this article.

SECTION 4. Part 1 of article 44 of title 8, Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-44-114. Determination of premium. THE AMOUNT OF THE PREMIUM TO BE PAID BY AN EMPLOYER FOR A CONTRACT OF INSURANCE OF COMPENSATION AND BENEFITS AS PROVIDED IN ARTICLES 40 TO 47 OF THIS TITLE OR AGAINST LIABILITY THEREFOR SHALL BE ON THE BASIS OF THE ANNUAL EXPENDITURE OF MONEY BY SAID EMPLOYER FOR THE SERVICES OF PERSONS ENGAGED IN SUCH EMPLOYER'S EMPLOYMENT; EXCEPT THAT NO PORTION OF SUCH EXPENDITURE REPRESENTING A PER DIEM PAYMENT SHALL BE CONSIDERED UNLESS SUCH PAYMENT IS CONSIDERED WAGES FOR FEDERAL INCOME

TAX PURPOSES.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 22, 1994