

SECOND REGULAR SESSION

SENATE BILL NO. 1086

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOLSMAN.

Read 1st time February 24, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6597S.011

AN ACT

To repeal section 287.250, RSMo, and to enact in lieu thereof one new section relating to the average weekly wage of certain employees under workers' compensation laws.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 287.250, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 287.250, to read as follows:

287.250. 1. Except as otherwise provided for in this chapter, the method
2 of computing an injured employee's average weekly earnings which will serve as
3 the basis for compensation provided for in this chapter shall be as follows:

4 (1) If the wages are fixed by the week, the amount so fixed shall be the
5 average weekly wage;

6 (2) If the wages are fixed by the month, the average weekly wage shall be
7 the monthly wage so fixed multiplied by twelve and divided by fifty-two;

8 (3) If the wages are fixed by the year, the average weekly wage shall be
9 the yearly wage fixed divided by fifty-two;

10 (4) If the wages were fixed by the day, hour, or by the output of the
11 employee, the average weekly wage shall be computed by dividing by thirteen the
12 wages earned while actually employed by the employer in each of the last thirteen
13 calendar weeks immediately preceding the week in which the employee was
14 injured or if actually employed by the employer for less than thirteen weeks, by
15 the number of calendar weeks, or any portion of a week, during which the
16 employee was actually employed by the employer. For purposes of computing the
17 average weekly wage pursuant to this subdivision, absence of five regular or
18 scheduled work days, even if not in the same calendar week, shall be considered
19 as absence for a calendar week. If the employee commenced employment on a day

20 other than the beginning of a calendar week, such calendar week and the wages
21 earned during such week shall be excluded in computing the average weekly wage
22 pursuant to this subdivision. **In the case of an employee who works in a**
23 **construction-based industry, if such employee is prevented from**
24 **working on any day or combination of days due to weather conditions**
25 **beyond the control of the employee such that the total number of hours**
26 **worked in the preceding thirteen calendar weeks immediately**
27 **preceding the week in which the employee was injured is less than five**
28 **hundred twenty hours, then for purposes of calculating the employee's**
29 **average weekly wage under this subdivision the wages earned by the**
30 **employee shall be no less than the hourly wage rate paid to the**
31 **employee multiplied by five hundred twenty. For purposes of this**
32 **subdivision, "construction-based industry" shall include but not be**
33 **limited to any industry in which the employee was required to perform**
34 **outdoor construction labor services on a majority of the business work**
35 **days in the previous three-hundred and sixty-five day period;**

36 (5) If the employee has been employed less than two calendar weeks
37 immediately preceding the injury, the employee's weekly wage shall be considered
38 to be equivalent to the average weekly wage prevailing in the same or similar
39 employment at the time of the injury, except if the employer has agreed to a
40 certain hourly wage, then the hourly wage agreed upon multiplied by the number
41 of weekly hours scheduled shall be the employee's average weekly wage;

42 (6) If the hourly wage has not been fixed or cannot be ascertained, or the
43 employee earned no wage, the wage for the purpose of calculating compensation
44 shall be taken to be the usual wage for similar services where such services are
45 rendered by paid employees of the employer or any other employer;

46 (7) In computing the average weekly wage pursuant to subdivisions (1) to
47 (6) of this subsection, an employee shall be considered to have been actually
48 employed for only those weeks in which labor is actually performed by the
49 employee for the employer and wages are actually paid by the employer as
50 compensation for such labor.

51 2. For purposes of this section, the term "gross wages" includes, in
52 addition to money payments for services rendered, the reasonable value of board,
53 rent, housing, lodging or similar advance received from the employer, except if
54 such benefits continue to be provided during the period of the disability, then the
55 value of such benefits shall not be considered in calculating the average weekly

56 wage of the employee. The term "wages", as used in this section, includes the
57 value of any gratuities received in the course of employment from persons other
58 than the employer to the extent that such gratuities are reported for income tax
59 purposes. "Wages", as used in this section, does not include fringe benefits such
60 as retirement, pension, health and welfare, life insurance, training, Social
61 Security or other employee or dependent benefit plan furnished by the employer
62 for the benefit of the employee. Any wages paid to helpers or any money paid by
63 the employer to the employee to cover any special expenses incurred by the
64 employee because of the nature of his employment shall not be included in wages.

65 3. If an employee is hired by the employer for less than the number of
66 hours per week needed to be classified as a full-time or regular employee, benefits
67 computed for purposes of this chapter for permanent partial disability, permanent
68 total disability and death benefits shall be based upon the average weekly wage
69 of a full-time or regular employee engaged by the employer to perform work of the
70 same or similar nature and at the number of hours per week required by the
71 employer to classify the employee as a full-time or regular employee, but such
72 computation shall not be based on less than thirty hours per week.

73 4. If pursuant to this section the average weekly wage cannot fairly and
74 justly be determined by the formulas provided in subsections 1 to 3 of this
75 section, the division or the commission may determine the average weekly wage
76 in such manner and by such method as, in the opinion of the division or the
77 commission, based upon the exceptional facts presented, fairly determine such
78 employee's average weekly wage.

79 5. In computing the compensation to be paid to an employee, who, before
80 the injury for which the employee claims compensation, was disabled and drawing
81 compensation under the provisions of this chapter, the compensation for each
82 subsequent injury shall be apportioned according to the proportion of incapacity
83 and disability caused by the respective injuries which the employee may have
84 suffered.

85 6. For purposes of establishing a rate of compensation applicable only to
86 permanent partial disability, permanent total disability and death benefits,
87 pursuant to this chapter, the average weekly wage for an employee who is under
88 the age of twenty-one years shall be adjusted to take into consideration the
89 increased earning power of such employee until she or he attains the age of
90 twenty-one years and the average weekly wage for an employee who is an
91 apprentice or a trainee, and whose earnings would reasonably be expected to

92 increase, shall be adjusted to reflect a level of expected increase, based upon
93 completion of apprenticeship or traineeship, provided that such adjustment of the
94 average weekly wage shall not consider expected increase for a period occurring
95 more than three years after the date of the injury.

96 7. In all cases in which it is found by the division or the commission that
97 the employer knowingly employed a minor in violation of the child labor laws of
98 this state, a fifty percent additional compensation shall be allowed.

99 8. For an employee with multiple employments, as to the employee's
100 entitlement to any temporary total or temporary partial disability benefits only
101 pursuant to subsection 9 of section 287.220, and for no other purposes, the
102 employee's total average weekly wage shall be equal to the sum of the total of the
103 average weekly wage computed separately for each employment pursuant to the
104 provisions of this section to which the employee is unable to return because of
105 this injury.

106 9. The parties, by agreement and with approval of an administrative law
107 judge, legal advisor or the commission, may enter into a compromise lump sum
108 settlement in either permanent total or permanent partial disability cases which
109 prorates the lump sum settlement over the life expectancy of the injured
110 worker. When such an agreement has been approved, neither the weekly
111 compensation rate paid throughout the case nor the maximum statutory weekly
112 rate applicable to the injury shall apply. No compensation rate shall exceed the
113 maximum statutory weekly rate as of the date of the injury. Instead, the
114 prorated rate set forth in the approved settlement documents shall control and
115 become the rate for that case. This section shall be retroactive in effect.

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