

CHAPTER 1007**WORKERS' COMPENSATION — NONRESIDENT EMPLOYERS — EARNINGS
CALCULATION — LIEN AMOUNT APPROVAL**

S.F. 2373

AN ACT relating to workers' compensation concerning service of notices on nonresident employers, the calculation of weekly earnings, and the approval of related liens.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 85.3, subsection 2, Code 1999, is amended to read as follows:

2. Any employer who is a nonresident of ~~the~~ this state, for whom services are performed within the this state by ~~employees entitled to rights under this chapter, chapter 85A or chapter 85B~~ any employee, is deemed to be doing business in this state by virtue of having such services performed and the employer and employee shall be subject to the jurisdiction of the workers' compensation commissioner and to all of the provisions of this chapter, chapters 85A, 85B, 86, and 87, as to any and all personal injuries sustained by ~~an~~ the employee arising out of and in the course of such employment within this state. In addition, every corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with this state shall be subject to the jurisdiction of the workers' compensation commissioner, and the workers' compensation commissioner shall hold such corporation, individual, personal representative, partnership, or association amenable to suit in this state in every case not contrary to the provisions of the Constitution of the United States.

3. Service of process or original notice upon a nonresident employer may be performed as provided in section 617.3 or as provided in the Iowa rules of civil procedure. In addition, service may be made on any corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with this state as provided in rule of civil procedure 56.1 within or without this state or if such service cannot be made, in any manner consistent with due process of law prescribed by the workers' compensation commission.¹

In addition to those persons authorized to receive personal service as in civil actions as permitted by chapter 17A and this chapter, such employer shall be deemed to have appointed the secretary of state of this state as its lawful attorney upon whom may be served or delivered any and all notices authorized or required by the provisions of this chapter, chapters 85A, 85B, 86, 87, and 17A, and to agree that any and all such services or deliveries of notice on the secretary of state shall be of the same legal force and validity as if personally served upon or delivered to such nonresident employer in this state.

This section does not limit or affect the right to serve an original notice upon any corporation, individual, personal representative, partnership, or association within or without this state in any manner otherwise permitted by statute or rule.

4. For purposes of this section, a nonresident employer is any employer that is not a resident of Iowa as defined in section 617.3.

Sec. 2. Section 85.36, subsection 6, Code 1999, is amended to read as follows:

6. In the case of an employee who is paid on a daily, or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, not including overtime or premium pay, of ~~said the~~ employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee

¹ See chapter 1232, §46 herein

worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

Sec. 3. Section 85.36, subsection 7, Code 1999, is amended to read as follows:

7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation. If the earnings of other employees cannot be determined, the employee's weekly earnings shall be the average computed for the number of weeks the employee has been in the employ of the employer.

Sec. 4. Section 86.11, Code 1999, is amended to read as follows:

86.11 REPORTS OF INJURIES.

Every employer shall hereafter keep a record of all injuries, fatal or otherwise, alleged by an employee to have been sustained in the course of the employee's employment and resulting in incapacity for a longer period than one day. If the injury results only in temporary disability, causing incapacity for a longer period than three days ~~except as provided in section 86.36~~, then within four days thereafter, not counting Sundays and legal holidays, the employer or insurance carrier having had notice or knowledge of the occurrence of such injury and resulting disability, shall file a report with the workers' compensation commissioner in the form and manner required by the commissioner. If such injury to the employee results in permanent total disability, permanent partial disability or death, then the employer or insurance carrier upon notice or knowledge of the occurrence of the employment injury, shall file a report with the workers' compensation commissioner, within four days after having notice or knowledge of the permanent injury to the employee or the employee's death. The report to the workers' compensation commissioner of injury shall be without prejudice to the employer or insurance carrier and shall not be admitted in evidence or used in any trial or hearing before any court, the workers' compensation commissioner or a deputy workers' compensation commissioner except as to the notice under section 85.23.

Sec. 5. Section 86.39, Code 1999, is amended to read as follows:

86.39 FEES — APPROVAL — LIEN.

All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85, 85A, 85B, and 87 are subject to the approval of the workers' compensation commissioner, ~~and no lien for such service is enforceable without the approval of the amount of the lien by the workers' compensation commissioner.~~ For services rendered in the district court and appellate courts, the attorney's fee is subject to the approval of a judge of the district court.

Sec. 6. Section 86.36, Code 1999, is repealed.

Approved March 16, 2000