85.36 Basis of computation.
The basis of compensation shall be the weekly earnings of the injured employee at the
time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee
to which such employee would have been entitled had the employee worked the customary
hours for the full pay period in which the employee was injured, as regularly required by the
employee’s employer for the work or employment for which the employee was employed,
computed or determined as follows and then rounded to the nearest dollar:
1. In the case of an employee who is paid on a weekly pay period basis, the weekly gross
earnings.
2. In the case of an employee who is paid on a biweekly pay period basis, one-half of the
biweekly gross earnings.
3. In the case of an employee who is paid on a semimonthly pay period basis, the
semimonthly gross earnings multiplied by twenty-four and subsequently divided by fifty-two.
4. In the case of an employee who is paid on a monthly pay period basis, the monthly
gross earnings multiplied by twelve and subsequently divided by fifty-two.
5. In the case of an employee who is paid on a yearly pay period basis, the weekly earnings
shall be the yearly earnings divided by fifty-two.
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,
including shift differential pay but not including overtime or premium pay, of 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 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.
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, including shift differential pay
but 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.
8. If at the time of the injury the hourly earnings have not been fixed or cannot be
ascertained, the earnings for the purpose of calculating compensation shall be taken to be
the usual earnings for similar services where such services are rendered by paid employees.
9. If an employee earns either no wages or less than the usual weekly earnings of the
regular full-time adult laborer in the line of industry in which the employee is injured in that
locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee
has earned from all employment during the twelve calendar months immediately preceding
the injury.
a. In computing the compensation to be allowed a volunteer fire fighter, emergency
medical care provider, reserve peace officer, or volunteer ambulance driver, the earnings as a
fire fighter, emergency medical care provider, reserve peace officer, or volunteer ambulance
driver shall be disregarded and the volunteer fire fighter, emergency medical care provider,
reserve peace officer, or volunteer ambulance driver shall be paid an amount equal to the
compensation the volunteer fire fighter, emergency medical care provider, reserve peace
officer, or volunteer ambulance driver would be paid if injured in the normal course of
the volunteer fire fighter’s, emergency medical care provider’s, reserve peace officer’s, or
volunteer ambulance driver’s regular employment or an amount equal to one hundred and
forty percent of the statewide average weekly wage, whichever is greater.
b. If the employee was an apprentice or trainee when injured, and it is established under
normal conditions the employee’s earnings should be expected to increase during the period of disability, that fact may be considered in computing the employee’s weekly earnings.

c. If the employee was an inmate as defined in section 85.59, the inmate’s actual earnings shall be disregarded, and the weekly compensation rate shall be as set forth in section 85.59.

10. If a wage, or method of calculating a wage, is used for the basis of the payment of a workers’ compensation insurance premium for a proprietor, partner, limited liability company member, limited liability partner, or officer of a corporation, the wage or the method of calculating the wage is determinative for purposes of computing the proprietor’s, partner’s, limited liability company member’s, limited liability partner’s, or officer’s weekly workers’ compensation benefit rate.

11. In computing the compensation to be allowed an elected or appointed official, the official may choose either of the following payment options:

a. The official shall be paid an amount of compensation based on the official’s weekly earnings as an elected or appointed official.

b. The earnings of the official as an elected or appointed official shall be disregarded and the official shall be paid an amount equal to one hundred forty percent of the statewide average weekly wage.

12. In the case of an employee injured in the course of performing as a professional athlete, the basis of compensation for weekly earnings shall be one-fiftieth of total earnings which the employee has earned from all employment for the previous twelve months prior to the injury.

[S13, §2477-m15; C24, 27, 31, 35, 39, §1397; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.36; 82 Acts, ch 1161, §12, 13]

86 Acts, ch 1074, §2; 87 Acts, ch 91, §1; 90 Acts, ch 1046, §1; 95 Acts, ch 41, §2; 95 Acts, ch 140, §1, 2; 96 Acts, ch 1059, §3; 96 Acts, ch 1079, §3; 97 Acts, ch 48, §3; 2000 Acts, ch 1007, §2, 3; 2001 Acts, ch 87, §4; 2004 Acts, 1st Ex, ch 1001, §12, 18; 2008 Acts, ch 1079, §1; 2010 Acts, ch 1149, §1

Referred to in §85.33