

**Senate Study Bill 3175 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON LABOR AND BUSINESS  
RELATIONS BILL BY  
CHAIRPERSON COURTNEY)

**A BILL FOR**

1 An Act requiring certain weekly workers' compensation benefits  
2 to be calculated by including an employee's overtime  
3 and premium pay, and to include an annual cost-of-living  
4 adjustment.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.36, Code 2009, is amended to read as  
2 follows:

3 **85.36 Basis of computation.**

4 1. The basis of compensation shall be the weekly earnings  
5 of the injured employee at the time of the injury. Weekly  
6 earnings means gross salary, wages, or earnings of an employee  
7 to which such employee would have been entitled had the  
8 employee worked the customary hours for the full pay period in  
9 which the employee was injured, as regularly required by the  
10 employee's employer for the work or employment for which the  
11 employee was employed, computed or determined as follows and  
12 then rounded to the nearest dollar:

13 ~~1.~~ a. In the case of an employee who is paid on a weekly  
14 pay period basis, the weekly gross earnings.

15 ~~2.~~ b. In the case of an employee who is paid on a biweekly  
16 pay period basis, one-half of the biweekly gross earnings.

17 ~~3.~~ c. In the case of an employee who is paid on a  
18 semimonthly pay period basis, the semimonthly gross earnings  
19 multiplied by twenty-four and subsequently divided by  
20 fifty-two.

21 ~~4.~~ d. In the case of an employee who is paid on a monthly  
22 pay period basis, the monthly gross earnings multiplied by  
23 twelve and subsequently divided by fifty-two.

24 ~~5.~~ e. In the case of an employee who is paid on a yearly  
25 pay period basis, the weekly earnings shall be the yearly  
26 earnings divided by fifty-two.

27 ~~6.~~ f. In the case of an employee who is paid on a daily  
28 or hourly basis, or by the output of the employee, the  
29 weekly earnings shall be computed by dividing by thirteen  
30 the earnings, including but not limited to overtime, shift  
31 differential ~~pay but not including overtime or, and~~ premium  
32 pay, of the employee earned in the employ of the employer in  
33 the last completed period of thirteen consecutive calendar  
34 weeks immediately preceding the injury. If the employee was  
35 absent from employment for reasons personal to the employee

1 during part of the thirteen calendar weeks preceding the  
2 injury, the employee's weekly earnings shall be the amount  
3 the employee would have earned had the employee worked when  
4 work was available to other employees of the employer in a  
5 similar occupation. A week which does not fairly reflect  
6 the employee's customary earnings shall be replaced by the  
7 closest previous week with earnings that fairly represent the  
8 employee's customary earnings.

9 ~~7.~~ g. In the case of an employee who has been in the employ  
10 of the employer less than thirteen calendar weeks immediately  
11 preceding the injury, the employee's weekly earnings shall be  
12 computed under ~~subsection 6~~ paragraph "f", taking the earnings,  
13 including but not limited to overtime, shift differential  
14 ~~pay but not including overtime or, and~~ premium pay, for such  
15 purpose to be the amount the employee would have earned had the  
16 employee been so employed by the employer the full thirteen  
17 calendar weeks immediately preceding the injury and had  
18 worked, when work was available to other employees in a similar  
19 occupation. If the earnings of other employees cannot be  
20 determined, the employee's weekly earnings shall be the average  
21 computed for the number of weeks the employee has been in the  
22 employ of the employer.

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

28 ~~8.~~ 2. If at the time of the injury the hourly earnings  
29 have not been fixed or cannot be ascertained, the earnings for  
30 the purpose of calculating compensation shall be taken to be  
31 the usual earnings for similar services where such services are  
32 rendered by paid employees.

33 ~~9.~~ 3. If an employee earns either no wages or less than the  
34 usual weekly earnings of the regular full-time adult laborer  
35 in the line of industry in which the employee is injured in

1 that locality, the weekly earnings shall be one-fiftieth of  
2 the total earnings which the employee has earned from all  
3 employment during the twelve calendar months immediately  
4 preceding the injury.

5     *a.* In computing the compensation to be allowed a volunteer  
6 fire fighter, emergency medical care provider, reserve peace  
7 officer, volunteer ambulance driver, volunteer emergency rescue  
8 technician as defined in section 147A.1, or emergency medical  
9 technician trainee, the earnings as a fire fighter, emergency  
10 medical care provider, reserve peace officer, volunteer  
11 ambulance driver, volunteer emergency rescue technician, or  
12 emergency medical technician trainee shall be disregarded and  
13 the volunteer fire fighter, emergency medical care provider,  
14 reserve peace officer, volunteer ambulance driver, volunteer  
15 emergency rescue technician, or emergency medical technician  
16 trainee shall be paid an amount equal to the compensation  
17 the volunteer fire fighter, emergency medical care provider,  
18 reserve peace officer, volunteer ambulance driver, volunteer  
19 emergency rescue technician, or emergency medical technician  
20 trainee would be paid if injured in the normal course of the  
21 volunteer fire fighter's, emergency medical care provider's,  
22 reserve peace officer's, volunteer ambulance driver's,  
23 volunteer emergency rescue technician's, or emergency medical  
24 technician trainee's regular employment or an amount equal to  
25 one hundred and forty percent of the statewide average weekly  
26 wage, whichever is greater.

27     *b.* If the employee was an apprentice or trainee when  
28 injured, and it is established under normal conditions the  
29 employee's earnings should be expected to increase during the  
30 period of disability, that fact may be considered in computing  
31 the employee's weekly earnings.

32     *c.* If the employee was an inmate as defined in section  
33 85.59, the inmate's actual earnings shall be disregarded, and  
34 the weekly compensation rate shall be as set forth in section  
35 85.59.

1     ~~10.~~ 4. If a wage, or method of calculating a wage, is  
2 used for the basis of the payment of a workers' compensation  
3 insurance premium for a proprietor, partner, limited liability  
4 company member, limited liability partner, or officer of a  
5 corporation, the wage or the method of calculating the wage  
6 is determinative for purposes of computing the proprietor's,  
7 partner's, limited liability company member's, limited  
8 liability partner's, or officer's weekly workers' compensation  
9 benefit rate.

10     ~~11.~~ 5. In computing the compensation to be allowed an  
11 elected or appointed official, the official may choose either  
12 of the following payment options:

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

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

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

25     6. The basis of compensation for permanent total disability  
26 benefits or death benefits shall increase on January 1 of  
27 each year for compensation which becomes due that year by  
28 a percentage equal to the cost-of-living adjustment made  
29 to disability benefits payable by the United States social  
30 security administration in December of the immediately  
31 preceding year.

32     Sec. 2. Section 85.61, subsection 3, Code 2009, is amended  
33 to read as follows:

34     3. "*Gross earnings*" means recurring payments by employer to  
35 the employee for employment, before any authorized or lawfully

1 required deduction or withholding of funds by the employer,  
2 excluding irregular bonuses, retroactive pay, ~~overtime~~, penalty  
3 pay, reimbursement of expenses, expense allowances, and the  
4 employer's contribution for welfare benefits.

5

EXPLANATION

6 This bill requires certain weekly workers' compensation  
7 benefits to be calculated by including an employee's overtime  
8 and premium pay, and to include an annual cost-of-living  
9 adjustment.

10 The bill amends Code section 85.36 to require the  
11 calculation of the amount of weekly workers' compensation  
12 benefits to include, not exclude, an employee's earnings for  
13 overtime and premium pay. A coordinating amendment is made to  
14 Code section 85.61.

15 The bill also amends Code section 85.36 to require the basis  
16 of compensation for weekly workers' compensation benefits  
17 payable for permanent total disability benefits or death  
18 benefits to increase on January 1 each year for compensation  
19 which becomes due that year, by a percentage equal to the  
20 cost-of-living adjustment made to disability benefits payable  
21 by the United States social security administration in December  
22 of the immediately preceding year.

23 Technical corrections are also made to Code section 85.36 to  
24 remove an unnumbered paragraph and for purposes of clarity.