

Senate Study Bill 1140 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON LABOR AND BUSINESS
RELATIONS BILL BY
CHAIRPERSON HORN)

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 2011, 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, or volunteer ambulance driver, the earnings as a
8 fire fighter, emergency medical care provider, reserve peace
9 officer, or volunteer ambulance driver shall be disregarded and
10 the volunteer fire fighter, emergency medical care provider,
11 reserve peace officer, or volunteer ambulance driver, shall
12 be paid an amount equal to the compensation the volunteer
13 fire fighter, emergency medical care provider, reserve peace
14 officer, or volunteer ambulance driver would be paid if injured
15 in the normal course of the volunteer fire fighter's, emergency
16 medical care provider's, reserve peace officer's, or volunteer
17 ambulance driver's regular employment or an amount equal to one
18 hundred and forty percent of the statewide average weekly wage,
19 whichever is greater.

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

25 *c.* If the employee was an inmate as defined in section
26 85.59, the inmate's actual earnings shall be disregarded, and
27 the weekly compensation rate shall be as set forth in section
28 85.59.

29 ~~10.~~ 4. If a wage, or method of calculating a wage, is
30 used for the basis of the payment of a workers' compensation
31 insurance premium for a proprietor, partner, limited liability
32 company member, limited liability partner, or officer of a
33 corporation, the wage or the method of calculating the wage
34 is determinative for purposes of computing the proprietor's,
35 partner's, limited liability company member's, limited

1 liability partner's, or officer's weekly workers' compensation
2 benefit rate.

3 ~~11.~~ 5. In computing the compensation to be allowed an
4 elected or appointed official, the official may choose either
5 of the following payment options:

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

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

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

18 6. The basis of compensation for permanent total disability
19 benefits or death benefits shall increase on January 1 of
20 each year for compensation which becomes due that year by
21 a percentage equal to the cost-of-living adjustment made
22 to disability benefits payable by the United States social
23 security administration in December of the immediately
24 preceding year.

25 Sec. 2. Section 85.61, subsection 3, Code 2011, is amended
26 to read as follows:

27 3. "*Gross earnings*" means recurring payments by employer to
28 the employee for employment, before any authorized or lawfully
29 required deduction or withholding of funds by the employer,
30 excluding irregular bonuses, retroactive pay, overtime, penalty
31 pay, reimbursement of expenses, expense allowances, and the
32 employer's contribution for welfare benefits.

33

EXPLANATION

34 This bill requires certain weekly workers' compensation
35 benefits to be calculated by including an employee's overtime

1 and premium pay, and to include an annual cost-of-living
2 adjustment.

3 The bill amends Code section 85.36 to require the
4 calculation of the amount of weekly workers' compensation
5 benefits to include, not exclude, an employee's earnings for
6 overtime and premium pay. A coordinating amendment is made to
7 Code section 85.61.

8 The bill also amends Code section 85.36 to require the basis
9 of compensation for weekly workers' compensation benefits
10 payable for permanent total disability benefits or death
11 benefits to increase on January 1 each year for compensation
12 which becomes due that year, by a percentage equal to the
13 cost-of-living adjustment made to disability benefits payable
14 by the United States social security administration in December
15 of the immediately preceding year.

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