

**House File 90 - Introduced**

HOUSE FILE 90

BY HUNTER, STAED, MASCHER, and  
KURTZ

**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 2019, 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 2019, is amended  
26 to read as follows:

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

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1           the explanation's substance by the members of the general assembly.

2       This bill requires certain weekly workers' compensation  
3 benefits to be calculated by including an employee's overtime  
4 and premium pay, and to include an annual cost-of-living  
5 adjustment.

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

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

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