

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1408

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1408
2/1/2021

Definition of wages for purposes of workers' compensation benefits.

(9:55) Chairman Lefor calls the hearing to order.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- WSI health insurance
- Retirement benefits.

Rep Bochee~District 44. Attachment #4451 & WSI Fund Reserve #4452.

Craig Monatukwa~Injured Worker & Father of 4. Attachment #4301.

Tim Wahlin~Chief of Injury Services at WSI. Attachment #4255.

Matt Gardner~Director of Government Affairs-Greater ND Chamber. Testified in opposition.

Russ Hanson~Associated Contractors. Testified in opposition.

Chairman Lefor closes the hearing.

Vice Chairman Keiser moved a Do Not Pass.

Rep D Ruby second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	N
Rep P Anderson	A

Vote roll call taken Motion carried 12-1-1 & Hagert is the carrier.

Additional written testimony: Attachments #4285 & 4361.

(10:30) End time.

Ellen LeTang, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1408: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1408 was placed on the Eleventh order on the calendar.

February 1, 2020



North Dakota House of Representatives

State Capitol
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Bismarck, ND 58505-0360

Representative
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Minority Leader

HB 1408 Testimony House Industry, Business and Labor Committee

Good morning Chair Lefor and members of the House IBL Committee.

House Bill 1408 is a bill that would require Workforce Safety and Insurance to include employer paid health insurance and retirement benefits for the determination of total wages for an injured employee. The bill is introduced based on my experience in listening to a constituent and advocating for his ability to secure post-injury employment that provides overall compensation comparable to his pre-injury employment. He and I both know that this legislation won't help him and his family specifically but could provide adequate support for future injured employees.

As business owners and employees, ourselves, we know that when an employer determines compensation to its employees, salary is just part of the equation. Whether or not health insurance or retirement benefits are offered, and for how much the employer will cover versus what the employee will cover are also a part of that determination. As a legislature there have been times where in lieu of increasing employee salaries, we have continued paying for a full health insurance premium or increase contributions to employee retirement programs. Private employers are no different. To compete for qualified employees and help retain them, while providing security for their health, possibly the health of their family and their retirement, health insurance and retirement benefits weigh greatly into the overall compensation provided to an employee.

Employees, when deciding on whether to work for a specific employer or not, typically compares not just the salary assigned to the job, but also the health insurance and retirement benefits that may or may not offset the salary. This becomes a very personal decision to each employee and their family. Many of whom take less of a salary to receive partial or fully paid health insurance that will meet the healthcare needs they or their family have. This committee is very familiar with the various discussions related to not only the PERS health insurance plan administered for all state employees, but also the discussions around private health insurance providers and what they do or don't provide for coverage, or what is required or not required to be covered for North Dakotans.

So if the public and private employment "system" uses healthcare insurance and retirement contributions as part of how salary is determined, why should it be any different for WSI's determination of wages for injured employees as part of their compensation throughout medical rehabilitation, job retraining or education programs?

You'll hear from Craig, the constituent I referred to at the beginning of my testimony, about the financial impacts he and his family have faced due to only his salary being considered as compensation. The impacts to his family and likely thousands of other injured employees throughout the state ends up moving many of these people to access government programs that are provided by taxpayers. Going onto government sponsored health insurance or having to deplete existing retirement savings to provide for current needs, leads to increased costs to all of us that, I think, can be absorbed partially by our WSI program.

Attached to my testimony is information provided by Legislative Council regarding the health of WSI's fund, which is reaching twice the size required by statute to have in reserves. All while providing employers premium dividends for 15 of the last fiscal years and at the max amount of 50% of their premiums the last five fiscal years. \$1.5 billion in premium dividends provided to employers over the past 15 years, with that trend to continue. The WSI Board's management of the fund combined with strong years for investments has led to a very healthy fund reserve that could be considered to provide for stronger financial support for injured employees. With the forecast indicating continued growth of the fund, current premiums paid by employers, of which are the lowest in the nation, would not be increased. The financial health of injured employees and their families in our state would also be increased, leading to more spending on goods and services, less personal debt and fewer North Dakotans needing to access certain government programs. This in turn would likely lead to healthier families and communities.

I ask the committee to support HB 1408 and hope that you can assist in developing a solution to better support injured employees in our state.

I will try my best to answer any questions committee members may have.

Representative Boschee,

This email is provided in response to your questions regarding the Workforce Safety and Insurance (WSI) fund and North Dakota Century Code Section 65-04-02.

As an update to the September 4, 2020, email below:

As of June 30, 2020, WSI's actuarially established discounted reserve was \$1.03 billion. Based on Section 65-04-02, the fund surplus target was \$206 million to \$412 million. The fund surplus balance on June 30, 2020, was \$906.2 million, after deducting dividend payments of \$103 million. Of the \$906.2 million, \$11.5 million was committed to safety and education grants and \$14.3 million was committed to an educational revolving loan fund. Therefore, the available fund surplus on June 30, 2020, was **\$880.4 million**, equivalent to 185.5 percent of the discounted reserve.

Workforce Safety and Insurance has issued dividend credits in 15 of the previous 16 fiscal years, totaling approximately \$1.5 billion.

Regarding your question related to dividends, Subsection 3 of Section 65-04-02 provides:

“If the level of financial reserves plus available surplus determined as of June thirtieth of any year is above one hundred forty percent of the actuarially established discounted reserve, the organization shall issue premium dividends in a fiscally prudent manner so that the organization is estimated to come into compliance with the requirements of subsection 1 within the following two years. However, premium dividends issued may not exceed fifty percent of the preceding year's premium in any given year.”

Based on recent performance of the WSI fund, WSI has issued dividends at the statutory maximum rate of 50 percent the last five fiscal years. Based on information from WSI, it appears likely dividends will be issued to employers at the statutory maximum rate of 50 percent the next few years, assuming investment returns of the WSI fund remain strong and barring a significant market decrease.

If investment returns remain strong, it is likely the available surplus of the WSI fund will continue to increase, exceeding the June 30, 2020, \$880.4 million available fund surplus, after considering expected dividends of approximately \$110 million each year and approximately \$25 million committed for safety and education related items, and potentially reaching a \$1 billion available fund surplus at June 30, 2021.

If you have any additional questions, please let me know.

Thank you.

Levi Kinnischtzke, CPA

Fiscal Analyst

North Dakota Legislative Council

Good morning and thank you for allowing me to tell my story here today. My name is Craig Monatukwa. I am a husband and father of four. I am here in support of HB1408.

In January of 2016, I fractured a vertebrae in my back on the job. I went through the correct steps to get WSI involved and followed their protocol concerning reporting the accident, etc.

It took them almost a year to decide that I needed a fusion of my L5-S1 vertebrae. In that time, I worked as I could and followed the doctor's orders. But I developed neuropathy due to the continued damage to my back and nervous system in my leg while I waited for WSI to approve the spinal fusion. After the fusion was finally approved and done, while I was still not fully recovered, my company released me through the FMLA loopholes.

The neuropathy was permanent and continued to cause me problems, so the decision was made to proceed with a Spinal Cord Stimulator; an implant into my back to attempt to give relief to the nerve damage. It works, somewhat, but the problem is that I was not allowed to keep my CDL with the implant.

My CDL was how I was making a good living. I was making approximately 22 dollars an hour with roughly 15 hours a week of overtime available. My company paid for the entire family health insurance premium, a benefit that other companies that paid more didn't offer. They also contributed to a 401k for me. I don't recall all of the details, I never thought I would need to. This are the primary reasons I took the job with that company; I have a family and preferred the healthcare and retirement over a couple dollars an hour in wages.

When I got hurt, WSI only took into consideration my actual wages, not the benefits. I was forced to get health insurance through the Marketplace, at my own expense. It is a big deal, especially with the current cost of family health insurance. I also had a retirement plan with my former employer, which I have been forced to cash out in order to afford life in general.

All of this being said, my current issue is that I believe the WSI system is broken. I have felt neglected by the people that are supposed to help me get back to where I was and the retraining I am receiving does not feel adequate to re-enter the job market at a competent level. I have tried to express my concerns to the case workers but have not received reassuring answers. In fact, I received this quote ". I wish I could guarantee your income would be the same as it was before, but I can't. WSI can't guarantee that either. " In my mind, WSI is there for just that; to guarantee that my life is back to as close as possible to what it was, kind of like auto insurance makes your car look like it was never hit...

I am very frustrated because now that I am done with my retraining, I am in the process of looking for jobs. The only ones that I have found are at a much lower payrate and do not have many, if any benefits available. My wife works part-time, and therefore does not have anything available to her beyond AFLAC, which is very minimal.

WSI's standard of 2/3 of my take home pay does not account for the benefits I received from my employer; benefits that I specifically took into consideration when I took the job. I could have easily taken a job that paid several dollars more an hour, which would have made the benefits from WSI greater, but instead, I looked to what would serve my family the best; health insurance and retirement. If I had thought I would have been in this position, where WSI was involved, I definitely would have gone for the higher wages, because over the course of the past 5 years, it would have significantly added up.

2021 House Bill No. 1408
Testimony before the House Industry, Business and Labor Committee
Presented by Tim Wahlin
Workforce Safety and Insurance
February 1, 2021

Mr. Chairman and Members of the Committee, my name is Tim Wahlin. I am the Chief of Injury Services at WSI. I am here today to provide testimony regarding HB 1408. The WSI Board does not support this bill.

This bill would alter the calculation of wages for injured employees. By way of reference, NDCC 65-01-02(6) defines "Average weekly wage" and identifies formulas used for varying types of employment. "Wages" are defined, in relevant part, as "remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes." NDCC 65-01-02(37)(a)(1). An employee's lost earnings are replaced by WSI should an injury create a disability.

The bill would add to the wage calculation any amounts paid by an employer for health care coverage and "monthly" contributions into a retirement system. For employers maintaining those fringe benefits, it may increase the indemnity payments an injured employee will receive depending upon the employee's level of earnings.

North Dakota's indemnity, or wage replacement benefit system, is regressive by nature. Wage replacement benefits are capped at a maximum of 125% of the average weekly wage in the state, currently \$1,292. An injured employee earning more than this amount will not be fully compensated for lost wages. Additionally, those below the minimum \$620 per week (60% of the state's average wage) are guaranteed their net wages after deducting social security taxes and federal income taxes. This minimum calculation exceeds the standard two-thirds gross wages all other employees earning above the minimum threshold are paid. Because indemnity benefits are not taxable, and because it has consistently been the legislature's policy that wage loss benefits not exceed actual earnings, these reductions are in place.

There is uncertainty regarding application of the bill for minimum calculation purposes. The bill alters the definition of wages, yet application and identification of the minimum calculation appears at NDCC 65-05-09. Should this bill proceed, the organization will need additional direction regarding the inclusion or exclusion of these fringe benefits in deriving an employee's minimum calculation. For purposes of developing the fiscal impact, the organization has excluded application of these amounts in applying the minimum calculations.

The WSI Board opposes the bill for several reasons. First, inclusion of these benefits can compensate an employee more than they were earning while working. Most wage loss scenarios are of short duration and an employee returns to the employer of injury. For injury years 2019 and 2020, 48% of all indemnity claims were less than 31 days. In these circumstances the employee will continue to be covered by the employer health plan and

additionally receive credit in the form of wages for that benefit. In other words, the employee will receive double compensation for that amount. The same may well occur with employer contributions to a retirement program but it is dependent upon the type of program in place.

Additionally, the Board's position is based upon the administrative complexity this creates in developing an employee's wage. Currently the WSI wage calculations can be generated by using pay stubs or tax documents such as W-2's. Gathering consistent information regarding the existence of employer health plans, whether the employee has elected coverage, or the amount of employer participation is complicated and onerous. This is especially true if an employee has numerous employers. Obviously balancing benefits against the administrative burden is for this body to determine in deriving North Dakota policy.

Finally, the Board expressed more concern regarding the complexity of inclusion of employer contributions to retirement programs. They indicated often these are elective and an employee's participation can vary widely even within a given year. Often the lowest paid or employees with the greatest need are unable to participate in these plans. As a result, these employees would yield no benefit from the inclusion. They also indicated in some employment, retirement contributions are not derived until year-end, so for those employees, accurate inclusion would be impossible.

This concludes my testimony. I would be happy to answer any questions you may have at this time.



House Industry Business and Labor Committee

02/01/21

HB 1408

On behalf of the National Federation of Independent Business (NFIB), I am asking you to give a Do Not Pass recommendation to House Bill 1408.

NFIB is a non-profit, non-partisan organization and is the nation's largest small business advocacy group. In North Dakota we represent more than 2,000 small businesses. The average NFIB member in North Dakota employs 10 people with gross sales of approximately \$500,000.

Controlling costs is becoming increasingly important for our small businesses. Increasing the payouts for workers' compensation benefits will ultimately lead to higher premium rates for our small businesses. On behalf of NFIB members across the state, we respectfully request that you oppose this bill.

Thank you for your consideration.

Don Larson



NORTH DAKOTA STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

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February 1, 2021

To the Honorable Mike Lefor and Member Representatives of the House Industry,
Business and Labor Committee

RE: House Bill 1408; Definition of Wages for Purposes of Workers' Compensation
Benefits

The North Dakota State Building and Construction Trades Council is in support of HB 1408. Workers' wages should be defined as a combination of gross earnings plus premiums paid for both health insurance and retirement programs for evaluation of a weekly benefit amount.

As defined in its purpose of workforce safety and insurance law, North Dakota "...declares the prosperity of the state depends in a large measure upon the well-being of its wageworkers, and, hence, for workers injured in hazardous employments, and for their families and dependents..." To fulfill this declared prosperity goal for wageworkers to the fullest, gross wages plus premiums for health insurance and retirement programs needs to be considered when determining the weekly benefit amount for temporary total, permanent total, or temporary partial disability benefits to workers who have been injured in their employment.

The aim of disability insurance is to ensure an equitable financial prosperity of life to the worker and their dependents that existed prior to the injury. This legislation will promote this declared prosperity of the worker along with the prosperity of North Dakota to the fullest.

As such, we respectfully urge a do pass recommendation for HB 1408.

With Kindest Regards, I am

Jason Ehlert
President
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