

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 793**

Introduced by Wallman, 30.

Read first time January 10, 2014

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to  
2 amend section 48-126, Reissue Revised Statutes of  
3 Nebraska; to change the definition of wages for certain  
4 death benefits; and to repeal the original section.  
5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 48-126, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           48-126 (1) Wherever in the Nebraska Workers' Compensation  
4 Act the term wages is used, it shall be construed to mean the money  
5 rate at which the service rendered is recompensed (a) under the  
6 contract of hiring in force at the time of the accident or (b) for  
7 death benefits for the dependents of a retired worker who died as a  
8 result of an occupational disease or latent and progressive injury or  
9 disease under the contract of hiring in force when the retired worker  
10 was last employed by the employer found liable for the occupational  
11 disease or latent and progressive injury or disease. It shall Wages  
12 does not include gratuities received from the employer or others, nor  
13 shall it include board, lodging, or similar advantages received from  
14 the employer, unless the money value of such advantages shall have  
15 been fixed by the parties at the time of hiring, except that if the  
16 workers' compensation insurer shall have collected a premium based  
17 upon the value of such board, lodging, and similar advantages, then  
18 the value thereof shall become a part of the basis of determining  
19 compensation benefits. In occupations involving seasonal employment  
20 or employment dependent upon the weather, the employee's worker's  
21 weekly wages shall be taken to be one-fiftieth of the total wages  
22 which he or she has earned from all occupations during the year  
23 immediately preceding the accident, unless it be shown that during  
24 such year, by reason of exceptional causes, such method of  
25 computation does not fairly represent the earnings of the employee.

1 worker. In such a case, the period for calculation shall be extended  
2 so far as to give a basis for the fair ascertainment of his or her  
3 average weekly earnings. In continuous employments, if immediately  
4 prior to the accident the rate of wages was fixed by the day or hour  
5 or by the output of the ~~employee,~~ worker, his or her weekly wages  
6 shall be taken to be his or her average weekly income for the period  
7 of time ordinarily constituting his or her week's work, and using as  
8 the basis of calculation his or her earnings during as much of the  
9 preceding six months as he or she worked for the same employer,  
10 except as provided in sections 48-121 and 48-122. The calculation  
11 shall also be made with reference to the average earnings for a  
12 working day of ordinary length and exclusive of earnings from  
13 overtime, except that if the insurance company's policy of insurance  
14 provides for the collection of a premium based upon such overtime,  
15 then such overtime shall become a part of the basis of determining  
16 compensation benefits.

17 (2) With respect to a retired worker who died as a result  
18 of an occupational disease or latent and progressive injury or  
19 disease, there is a conclusive presumption that he or she suffered a  
20 loss of access to the labor market and suffered a diminution of  
21 employability or impairment of earning capacity.

22 Sec. 2. Original section 48-126, Reissue Revised Statutes  
23 of Nebraska, is repealed.