

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2009**

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**HOUSE BILL 805**

Short Title: Workers' Comp./Calculation of Income. (Public)

Sponsors: Representatives Glazier; Faison and Lucas.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.

March 26, 2009

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE THAT AN EMPLOYER'S CONTRIBUTIONS TO AN  
EMPLOYEE'S RETIREMENT ACCOUNTS ARE INCLUDED IN THE CALCULATION  
OF "AVERAGE WEEKLY WAGE" UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 97-2(5) reads as rewritten:

"(5) Average Weekly Wages. – "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States government, provided the amount of said allowance shall be reported monthly by said trainee to his employer, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. For the purposes of this subdivision, the term 'earnings' includes an employer's contributions to an employee's retirement accounts if the contributions are vested, quantifiable, and available to the employee.

Where the employment prior to the injury extended over a period of fewer than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.



1           Wherever allowances of any character made to an employee in lieu of  
2 wages are specified part of the wage contract, they shall be deemed a part of  
3 his earnings.

4           Where a minor employee, under the age of 18 years, sustains a  
5 permanent disability or dies leaving dependents surviving, the compensation  
6 payable for permanent disability or death shall be calculated, first, upon the  
7 average weekly wage paid to adult employees employed by the same  
8 employer at the time of the accident in a similar or like class of work which  
9 the injured minor employee would probably have been promoted to if not  
10 injured, or, second, upon a wage sufficient to yield the maximum weekly  
11 compensation benefit. Compensation for temporary total disability or for the  
12 death of a minor without dependents shall be computed upon the average  
13 weekly wage at the time of the accident, unless the total disability extends  
14 more than 52 weeks, and then the compensation may be increased in  
15 proportion to his expected earnings.

16           In case of disabling injury or death to a volunteer fireman; member of an  
17 organized rescue squad; an authorized pickup firefighter, as defined in  
18 subdivision (2) of this section, when that individual is engaged in emergency  
19 fire suppression activities for the Division of Forest Resources; a duly  
20 appointed and sworn member of an auxiliary police department organized  
21 pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol  
22 functioning under Article 11 of Chapter 143B of the General Statutes, under  
23 compensable circumstances, compensation payable shall be calculated upon  
24 the average weekly wage the volunteer fireman, member of an organized  
25 rescue squad, authorized pickup firefighter of the Division of Forest  
26 Resources, when that individual is engaged in emergency fire suppression  
27 activities for the Division of Forest Resources, member of an auxiliary  
28 police department, or senior member of the State Civil Air Patrol was  
29 earning in the employment wherein he principally earned his livelihood as of  
30 the date of injury. Provided, however, that the minimum compensation  
31 payable to a volunteer fireman, member of an organized rescue squad, an  
32 authorized pickup firefighter of the Division of Forest Resources of the  
33 Department of Environment and Natural Resources, when that individual is  
34 engaged in emergency fire suppression activities for the Division of Forest  
35 Resources, a sworn member of an auxiliary police department organized  
36 pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol  
37 shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly  
38 benefit established in G.S. 97-29."

39           **SECTION 2.** This act is effective when it becomes law.